

CUIQUE SVUM. ^{to. 11.}

The Law of

TYTHES

Affirmed against all opposers.

OR,

*An Apologie for the maintenance of a
Gospel Ministry, Confirmed by Di-
vine and Humane Sanction.*

*By Christopher Sturges with a Black Title, and
without the Dedication to his Master by the Table of
contents.*

*EVEN SO, hee that Preacheth the Gospel
must live of the Gospel. 1 Cor. 9. 14.*

*Whatsoever you would another should doe to
you, doe you the same, for this is the Law and the
Prophets. Mat. 7. 12.*

L O N D O N,

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THE INTRODUCTION:

Deo, Ecclesiæ, Patriæ, Tibi.



Justice and Righteousness are among the great things of the Christians Law. They mistake Religion, who understand it to direct only in heavenly things; one part whereof is to make Honest Men, and while the Decalogue is within the compass of our Creed, and we believe both Tables of Gods law to contain our Morall duty, the scope of one must be (rightly understood) ever to guide our outward, morall, civil conversation. It is an age now much treating of Religion, and hard to suppose that any of those who are most forward would (willingly and knowingly) leave out one half; leading men to God with neglect of Men, and trampling down all Civil righteousness, in order to Heavenly: This makes it the more need-

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needfully considerable what that Righteousness is, that we may not seem to love God with neglect of our Neighbour, or in zeal of Religion to permit our selves unjust : but so to make our pilgrimage through this world, that we leave the reputation of Honest men behinde us, and so to pass through things temporall, that finally we lose not the things eternall. Particularly, in that great and so much vexed case and controversy of the remainder of the Churches Patrimony in *TYTHES* : which many look upon as of no more Right or Wrong, to continue or withdraw the payment of, then in relieving a Beggar with an Alms at the door : They may, or may not (what any advantages shall give opportunity to) with equal liberty, and no wrong to a just Conscience, parting or not parting with as they can contrive or shift, and so take to themselves that boundless license the Apostle has given in another case ; let a Man (in this) do what he will, he sinneth not : As if to venture upon the spoils of the Church, were no more then to divide what men have taken in hunting ; to defraud Religion, not so bad as to disturb Humane Right, (and yet that is bad enough, and yet this is worse) And to remove the pillar (worldly) of Gods service, of no greater guilt, or doubt, or fear then to seiz upon that a man finds in his way, or to fetch Timber for building a new house, or repairing his old, from his own *Lebanon*. A great mistake ! whereof the Enemy of all goodness makes much advantage ; being like to reduce the Lords Ministers hereby to great streights, and to get the daily allowance of oyle withdrawn : which, though ordinary in it self, was wont to be consecrate to keep light in the Temple : by subtracting *Levi's* portion, I mean, to disable *Levi* himself from attending the service of his God ; As (1) how can worldly men live in this world and follow worldly business, (as to the outward part to be studyed and acted by Man, even Gods service is) without worldly maintenance ?

(1) Ἄνθρωπος
ἐν αἰσθητικῇ
ἐκπαίδευσι
καὶ ἐν
ἀριστ. πολιτ.
lib. 1. cap. 3.

Such considerations as these awaked my thoughts to that I took to be a very needful enquiry, *scil.* Whether Tythes had indeed any of that we call Right or good title among Men demonstrable, to hinder the subtraction by any that are consci-

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conscientious? A Right in equity for maintenance of Gods service? Sure, this is very likely. A right in Justice by Divine law, which apportioneth (in the New-Testament) to (2) every labourer his reward, (3) to him that preacheth the Gospel, to live of the Gospel; and this no less probable. Nay, for the very Tenth in kinde and proportion, a worldly, civil, positive, humane Right; Such as might infer the detaining, Wrong, and make it civilly injurious not to part with what is not now courteously given, but justly paid; I resolved, it might be so: I assured my self it was so: And thought I had read and observed so much, that reduced to heads, and presented to view, might perswade others also: and because it was a truth I thought not known to all, and I perceived very many very much to love the truth; for their sakes therefore I set my self to represent what I could in haste lay together, to every ones friendly (4) consideration. No other the candor of mine own bosome did assure me I should either doubt to finde, or (5) need to fear: for the Publick had passed nothing against, but many things (6) for these dues, (which secured me on that part) besides the old established laws of the land; and for mine own private, the scales hung almost even: Not much to me whether they stood or fell, went up or down, as having not much to get or lose, to hope or fear. But for Sions sake I resolved I would not, I might not hold my peace: For Gods sake (I know mine own bosom) I was willing to be at the cost of following pains, for the Gospel of Jesus Christ's sake, and endeavour to preserve (if God should

(1) *M. 2. 10. 10.*
Luke 10. 7.
1 Tim. 5. 8.

(3) *1 Cor. 9. 11.*

(4) And shall be heartily glad, if it shall please that God who out of the mouths of Babes and Sucklings doth sometimes perfect his praise, to magnifie his own power so much the more, as to make the successfull, though weak means of undeceiving any; for, *Non queris omnes vestras opes, sed vestras justitias,* as St. Augustin somewhere said: It was not so much preservation

tion of any ones Right, as all mens innocency, that set me on work. Or as Pet. Cluniasensis spake, *Nec tam ad scribendum coegerunt iura decemurum, quam damna amittarum;* not hope of worldly gain, but fear of loss of Souls. And this twofold; both of theirs who shall do the wrong in with-holding, and theirs who shall miscarry for want of instruction, occasioned by with-holding of this worldly sustentation from him should have held out the light. Other means may be talked of, But —

(5) *Ἡ μὲν ἀρετὴ ἐν ἀσφαλείᾳ κατιστάνει, ἡ δὲ κακία ἐν κινδυνῷ.*
ἀσφάλεια δὲ δοῦναι ὁ μὲν ἐν ἑαυτῷ σωτηρίας ποιεῖται, ἡ δὲ ἐν ἑτέρῳ, παρὰ τὸν ἑαυτοῦ ἐν κακίᾳ ζῶν.
Christ. Hom 14. in cap 4. ad Thim. tom. 5. in N. Test. p 133.

(6) As in the Ordinance of Novum. 4. 1644. yet in force (beside many other) for recovery of them: The repelling of the Kentish, and many other Petitioners against them: The actual segregation of them from other parts of Delinquents Estates, to piece out a more comfortable Subsistence for Preachers out of them: And, above all, the late exemption of them from sale among other Cathedrall Endowments, with expresse Declaration, that they shall make every Parish, where they arise, afford 100 *per an.* to an able Guide of Souls. *Vid. Act of an. 8. 1649.* and what can, if this do not, assure their purpose? at least a Declaration of such Intentions, which is that we are to walk by.

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so bleſs weak endeavours) that ſupport had been hitherto the viſible and worldly maintenance of Chriſt's Kingdom in ours, I reſolved to dig down as deep as I could, to try and repreſent to view what foundation and ſtrength that pillar had, which chiefly (as worldly ſtill) hath held it out to the view of the world amongſt us; being glad to finde:

(1) *Rem autem barbarum (scilicet) an. ab incarnatione Domini 63) cum a gentibus tam novam audientem & inconfusa, omnino predicationem eorum conſequebantur, nec paternam Traditionem commutare volebat. Quia tamen de longe venerant, vitæque eorum exigebat modestia, ad petitionem eorum grandam insulam sibi, rubi, atque paludibus circumdatam ab Incolis Ynſuvitiis nuncupatam (Glaſtenbury) in lateribus suis Regionem ad habitandum conceſſit. Postea & alii duo Reges, licet Pagani, comperta eorum vita sanctissima (Joseph of Arimathea, and his 12. Fellow Apostles) unicuique eorum unam portionem terræ successivè conceſſerunt, ac ad petitionem eorum secundum morem Gentilium distas 12. Hydæ eisdem confirmaverunt; unde 12. Hida per eos adhuc, ut creditur, nomen sortiantur. Guilielm. Malmeſ. apud Spelm. Concil. pag. 5 de Exordio Christianæ Religionis in Britannia.*

(2) *Matth. 8. 20. Luc. 9. 58.*

(3) *Matth. 10. 40. John 13. 20.*

1. That it is of that firmneſſe and alſo age, that we have occaſion to bleſſe God for his (1) early mercy to this Land: That almoſt as ſoon as any where; he that once ſaid, (2) *Foxes have holes, and the birds of the aire neſts, but the Son of man nor where to lay his head*; had here (in his Miniſters, which (3) whoſoever receiveth, receiveth him) entertainment and home.

2. That prudence mixed with piety, and true love of God of equall ſincerity, and all dimenſions with that to their neareſt ſelves, prompted our long ſince dead and bleſſed Anceſtors, to doe for him as for themſelves, building the honour of his houſe with the ſame (if not better) materials then their own; and contriving to perpetuate (as they meant) true Chriſtian Worſhip, by allowing it the beſt (they thought ſo) of this world, no weaker nor other ſupport then went to the ſtrongeſt of their own buildings.

3. That it hath not been yet within the power of malice, envie, pride, tyranny, fraud, wretched covetouſneſſe, or any other inimicall paſſions or powers, to ſcatter or divert, diſturb or deſtroy: but by the bleſſing of God, and under the ſafety, power, and proteſtion of the Laws, *Levi* hath had his own, and yet has his own, to live on and ſerve his God, as well as other men. The foundation of Gods Houſe (his Church) ſtands faſt and firm upon the ſame bottom with theirs (beſides what it has from Heaven,) and beſide what may

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may be said for a Divine Right ; the Ministers of Jesus Christ have as much of humane as any other men can plead for, that is truly and justly theirs : And this to continue, and this for their works sake, and thus the Gospel made here without

(4) charge, which (5) St. Paul sometimes desired so solicitously : It being left to our Autumn of the world, only to reap the harvest of their rich piety, who lived and made very costly seed-times before us, and serve God cheap enough at their cost and charges : They having given so much from themselves, and all the world ; that we need only issue out their bounty, and in what we contribute or give forth to Christian Worship, are not so much liberall as righteous ; nor doe we give, but pay. This is so, I know it to be so, I was glad to finde it so : Others gifts have made it, and great is the advantage that comes hereby to Religion and us, from those are now at rest from their Labours, and their works follow them. I confesse, I could not but all along wish so great a work better done ; and sensibly complain of infirmities all along : that *impar congressus* between undertaking and performance was still in my eye ; and another discouragement of another Poet :

*Sumite materiam vestris qui scribitis equam
Viribus.*_____

Beside that I often wished I had been able but to bring in what my self saw the Argument did afford, and in part also where it was. But when withall I considered Goats hair and Badgers skins to finde acceptance, (for the tabernacle of those had not gold and silver : when I remembered the Widows mite commended, who gave of her penury, and not cold water to loose its reward, least (saith a Father) excuse should be any from want of sewell to warm. These things again refreshed and encouraged me to the rendry of small things, especially when I called to minde the Great Apostles straights, who was fain to take up with a part-bountie, when he had not wherewith to pay the whole: for *Silver and Gold* (saith he) *have I none*, (to a Beggar that wanted a Drachme) *but such as I have give I thee*, A. t. 3. 6. A ripe Judgment will soon discern wants enough, and so do I ; and that I hope

(4) It hath been warily and truly observed by some, that a Christians exercise of his Religion here in England, for the years of some Ages past, hath not usually cost him above his *ad. per an.* and that in his voluntary Easter oblation. The rest was but the disbursing or delivering forth what others gave long since, and it had been unjust ce-
not to pay, as given and appointed by ano-
thers Bounty. As for Christening and Marriage Duties they were extraordinary.

(5) 1 Cor. 9. 29

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is the chiefest fault : To have been better furnished with books, arts, languages, records, means, company, might both have strengthened many a weak nerve, and supplied many an empty vacuity. But yet if but one half hereof be strong, of what I hope none is weak ; if a moiety true, of what I hope none is false ; there may be so much of it as it is, that he that runs may read, and he that reads and understands will not (I hope) hereafter dare give leave to his Conscience to consent to that, which if he have the honesty of a Moor or Saracene, he must step back and pause, and decline ; I mean, by reaching out his hand to withdraw that, which if he were one of the Sons of *Pamphilio*, he would let alone, or rather give ; or, in plain terms, not dare to withhold his Tythes, unless he be resolved to more then covet his neighbours Goods.

This is a point of Religion very low in an age of Religion, and for Religion pretending to soar so very high ; But he that has but this, cannot upon these grounds, do this evil, and sin against his God : If there be Civil Right, there must be undoubtedly Civil wrong, (for they are Correlatives) fraud, injustice, spoil, rapine, coveting, thieving ; some of these, if not all : and God grant there be not also upon the grounds, and in the reputation of the Common-law, Sacreledg also, to meddle with, and in this case to pervert what That Law accounts Sacred.

But to come to the Point : (*Det Demq; his studiis vela secundum meis* : Or rather from more Divine extraction : Now God himselfe, and the Lord Jesus Christ, and the Holy Ghost direct my way ; *καταδείξαι* that it may go right in a righteous businesse :) That which I then propose to my selfe to assert, is, *The Civill Right of Tythes* : and mark those three words, they are so many limitations.

1. *Of Tythes* : and so I meddle not with any other Ecclesiasticall possessions or claimes.

2. *Of the Right of Tythes* : and so I meddle not with the story, which hath already been both very successfullly done, and also examined.

3. *Of the Civill Right of Tythes* : in evident and expresse contradistinction from the Sacred.

Which

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Which bee it what it will, (there be enough that have engaged themselves *pro & contra*;) The light and brightnesse of the Sun remaines clear in the Firmament after a demonstration: There is fire on Earth, and so are all their Arguments of force for a Divine Right, who claime by it; notwithstanding I shall have shewed there is enough in lower Secular Law amongst us to give right amongst men, by which alone we enjoy all other things; These doe not interfere, but mutually assist and strengthen each other; and the sticking to the one, must not needs be a present and sudden relinquishing, much lesse opposing of the other. To this Text therefore I keep my selfe, not intermedling to weaken or strengthen, or any wayes to interrupt or disturbe their course who move in another higher Sphere; let us both keep to our own, and that is a point of Prudence at least if not of Justice and Necessity. Neither do I them, or their higher pre'ensions, any wrong direct, or consequentiall: For a man may say, the silver Drachme was good and current Coyn, and yet not disparage *Solomons* Gold of Ophir: This Candle burning by me, has light and brightnesse enough to guide my pen, and yet it permits and leaves the Sun a more noble and glorious Planet. The accessse of a lesser strength does not infirm a greater; nor a prop of wood a pillar of Brasse or Marble; nor yet a favourable seconding Law made here, That the God of Heaven shall be Worshipped, disparage the Bible, or Tables of the bosome, where the same was before engraven. We have many things in our Councils and Common Laws, which are in the Scriptures, if no more but this, *Do as thou wouldst be done unto*; which (1) hath been thought Law enough for a Judge; neither does the sticking to them There, say they are not Here, or infer a light regard of them. Who by a Lawyers pleading, a man hath broken our Law by Perjury, and is thereby guilty of high offence, can therby think the prohibitions of the Decalogue despised? or because a Judge layes hold of our Countrey Law to punish Theft or Murder by, can say, He vilifies the sixth or eight Commands by which a man is at Church and in conscience forbid to steale? There may be a Subordination, and

is,

(1) *Ex hoc nico
Precepto satis in-
quet, unus, & ex
ap: ojus esse red-
dendam; neque
en: alio quocun-
que j: distalis libra
opus fuerit. Hoc
satis n: mencione
quis sedet in alio
j: ex, nullo se ali-
am de aliu proferra
sententiam, quā
de se ipse latum iri
voluerit. Praefat.
in Aluredi Leg.
apud Lombard.
Archaion-pa sta*

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is; between Lawes and Rights, and Crimes and Things; and the laying hold upon any of those of a lower range or series, were very ill interpreted a discountenance, much worse an opposition of the highest. Not disparaging therefore the higher Right, much lesse renouncing it, (and it was needfull to make such expresse protestation) relinquishing it only *pro hic & nunc*, by no meanes disclaiming, yet least of all opposing it; I lay hold of that my Text, *The Title of Civill Right*, directs and holds me to, by no meanes undervaluing or giving just occasion, it may be thought I doe undervalue the Golden Noble by this, that I think I have Silver enough currant Coyne to pay this Debt, and our Secular Laws will here with Us make out a Duenesse of Tythes by title sufficient, without troubling or borrowing any thing from the higher sphere of Divine, Naturall, or Ecclesiasticall.

Being thus then confined to mine own Circle, wherein I mean to keep my self religiously without transgressing; and like there to behold little but of Right, and Civil Right, and the Dueness of this maintenance of Religion intended. Thus to be asserted thereby, It may not be amisse, it cannot but be very expedient to premise sundry things of Right or Rights in generall, the nature, ground, rise, strength, and originall first growth of Them all, with this intent and purpose: That if we can finde the reason of All, we may the better judge of These: If we doe finde these to have the same strength and bottome to rest on, that all others have (to wit, humane paction and the powerfull word of the severing all-giving Law, which alone incloses all from the common) in the same with others, we may conclude, either these have enough, or none have any; for the same Cause produces the same effect alwayes where-soever; and if here be the same ground of right, there must be the same right also, why should it not? Now to the top of that I thus propose to my selfe to ayme at, I shall ascend as by so many steps; by these six following Propositions, beginning at the bottom, where all was left at first as in a wilderness of Community, and say as followeth.



O F Civill Right.

C H A P. I.

Proposition I.

BY the Law of Nature all things are (1) common. No propriety ascertained or cut out to any, but all left as made in a common heap for the common use of all men: As beasts come to the water and drink, but ask no leave; or as (2) the Hoords of *Tartary* which depasture and stay here and there so long as their safety or entertainment like them; or, lastly, as some simple *Indians*, who not knowing the craft of appropriations, think themselves rich enough, in that every man hath every thing:

(1) *Nec hoc quidem secundum Naturam* (saith *S. Ambrose*, speaking of the Philosophers opinion of the form of Justice, (sc.) to use what is common as common; private as private: 3) *Natura enim omnia communibus in commune proficit: Sic &c.*

nam Deus generati iussit omnia, ut passim omnibus communis esset, & terra fores omnium quodam communis possessio. Natura igitur jus commune generavit, usurpato jus fessit privatum. de Offic. lib. 1. cap. 2. tom 4. page 11.

And, uponth's ground, it seemes *Aquinas* thought it not unlawfull to re enter the inclosure in case of a poore mans extream necessity, there having been a kinde of tacite condition at the beginning, that the fences should hold but till there were a necessity of (in part) removing them. So by that occasion All things return again to All men. 22. *Qu. 66. Art. 7. Vtrum licet usurari propter necessitatem?* And much to the same purpose the more solide *Hugo Grotius* de *jure Belli & Pacis*, lib. 2. cap. 5. *Self. 6.*

And *Bellarmino*: *Quo ad usum necessarium sunt omnia communia positi, ut ut periculum aliud jus positi quicunque homo prohiberi, non minus vivas de rebus à Deo creatis. Atque hinc est quod in articulo necessitatis non dicitur, neque est fur, quia ex necessitate loco accipit unde vivat. de Bonis Operibus in part. lib. 3 cap. 12. Respons. ult.*

(2) *Uno in loco non diu commorantur, rati gravem esse infelicitatem diu in eodem loco habitare. Ortel. Geog. Tab 47. & vide Magir. Geogr. p. 223. & Heylin Microcosm p. 659.*

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(3) *Natura de-
dit unicuique jus
in omnia, li. c. in
statu more natura-
li, five anteq. om-
nes illi pactu
sefe invicem ab-
stinuissent, uni-
cuique licebat fa-
cere quicquid, ut, &
in quosc. n.que li-
cebat, & possidere,
uti, fuit omnibus
q. a volebat & pos-
serat T. Hobbe de
Cive, c. 1. Sec. 10*

(1) Tit. El. 1. 3.

(2) Virg. Georg.

3. w. ch. yec. La-

stantius interprets

onely of an open

Bounty; having

no more of strict

import then that

of another.

Flumina jam la-

tu, jam flumina

nectaru ibant. l. 5.

de lustricia cap. 5.

pag. 172.

(3) In Odav.

AQ. 2.

(4) *Erat in Sa-*

turtu a vo omnia

communio & indi-

visio omnibus, vel.

sa nam. c. n. d. u. pa-

rimonium efflu-

lustin. 43. unde in

Saturnalibus Ro-

manum communio.

(5) Ovid Met.

lib. 1.

(6) *Sunt avem*

privata, nulla Na-

tura; sed aut ve-

teri occupantur, ut

qui nondum in vo-

cua vivunt; aut

victoria; ne qui

bello potiri sunt;

aut lege, conditio-

ne, pactu, force;

ex quo fit ut ager

Arpinas Arpina-

tum, Tusculanus Tu-

*collanorum: simili-
signa est privata-um possessionum descriptio.*

Cicero de Offic. lib. 1.

(7) Apologet. Sec. 39 pag. 35.

So man, in *puris naturalibus* (looking (3) beyond coalition into societies, and notwithstanding any divine law, which ap- proves indeed (a posteriori) partitions made out, and streng- thens them) at first, and as God and Nature left him, is Ma- thers of Nothing; but was to take what he had need of, and leave the rest, (a very Cænobite) and Another had as much right as He, and He no more right then Another, but He with them, and they with Him, were together to enjoy the Bles- sings of God in Common.

*Non Domini ulla fores habuit, non fixum in agris
Qui reget certis finibus arva lapis,*

as the (1) Poet spake, with opennesse and community enough,

*Nè signare quidem aut partiri limite campum
Fas erat, in medium querebant, &c.*

so (2) another: and the grave (3) Seneca,

— *Pervium cunctis iter,*

Communis usus omnium rerum fuit.

And again, and still smiling upon the Free and (4) Golden Age,

— *Nullus in Campo sacer*

Divisit agros arbiter populis lapis.

(5) But by after acts came in Mine and Thine, *Communemque prius, cœu lumina Solis & Auræ,
Cautus humum longo signavit limite Mensor:*

as the (6) Orator tells us accordingly, That nothing is by Nature inclosed to such or such a one in severall, but either by first seisure, as those that entred upon what was no ones; or by Law, Agree- ment, Com-promise, Lot, &c. and so is such a Field such a Mans, or such a Families. (7) *Tertullian* observed of his time, *Omnia apud nos indiscreta sunt præter uxores*, Every one had his wife to himself, but nothing else: (It were well if our charity or goodnesse would enable or permit us ap- proach to so great happinesse;) and of the new fresh inspired Christians 'tis written, No one said, that *Any of the things*

*Arpinas Arpina-
tum, Tusculanus Tu-
collanorum: simili-
signa est privata-um possessionum descriptio.*

Cicero de Offic. lib. 1.

(7) Apologet. Sec. 39 pag. 35.

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he possessed was his owne, but they had all things Common, Acts 4. 34. and (yet wanted no one any thing, for) as many as had Lands or Possessions, sold and brought to the Apostles in bank, and distribution was made to each (in charity or equity) as he needed.

No more then this doe God or Nature intitle any to by name & singularly: Let great Possessors look to themselves, and make much of after inducements (which alone have lifted up their Lordships above the level;) and preserv them, & endeavor to keep them whole, and as well the whole as any part: For if the Bank be cut anywhere, the Floud may finde way thereby to run over all; if there be but a beginning to remove the bounds and lay open the fences that have severed Dominions anywhere, what is begun may proceed unluckily; and what has been done by any Men, may hap to be revoked as concerning themselves, and then poor *Codrus* is as rich as *Cresus*, and *A. B.* as great as any of the greatest.

But to proceed: Say I these things as a man only? *ἄνθρωπος*, private and fallible? Says not the Law the same also? Ask either of the three sister Queens; the Canon, Civill, and our Common Laws have shared in Government, some way or other of most part of the Christian world; and doe not they speak home or homeward this way?

The Canon first, a (2) wise piece, and a competent knowledge whereof doth' with us half create a Doctorship: And set aside where it superstitiously directs about things not needfull, or lightly takes in the Errours of dark times, or politickly advances the Pope to an (3) universall indirect (4) perhaps direct) Dominion, or blasphemously *tantum non*, advances him to an immense soverainty; *Dominus Deus noster Papa*, is said to be in the extravagants: In other serious and sober pieces of much gravity and great use, and thought by many to serve very commendably toward the end it pretends to aym at; the well regulating and ordering divers emergent cases that may arise and become doubtfull in the Catholike Church. See then there not far from the be-

(1) See Sir Tho. *Ridley's* view of the Lawes, par. I. cap. 5. Sect. 1. p. 73.

(2) Vid. *Caus. 2. qu. 3. Ca. 127. Totum enim orbis Papa tenet principum* Gloss. *partibus ad Decret. lib. 3. tit. 16. Nec est qui audeas dicere, Dominus, etc. 12a (auct. gloss. continetur, ad Extrav. 10. tit. 4. cap. 2.*

(4) Vid. *Extravag. de major. & obel. cap. 2. in fin. & gloss. porro subesse. ibid.*

* *Differt autem
Lex naturalis à
consuetudine &
Constitutione: Nam
Lex naturalis, Om-
nia sunt co- munita
omnibus; quod
non solum inter eos
servatum creditur
de quibus legitur,
multitudo enim
Credentium erat cor
unum & anima
una, &c. verum
etiam præcedente
semper à Philoso-
pho traditū inve-
nitur. Unde apud
Platonem illa civi-
tas iustissimè ordi-
nata tradit. r. in
qua quisque propri-
us sit affectus: tunc
vero consuetudine
vel constitutione,
hoc meum est, illud
alterius. Unde
Ang. Tract. 6. in
Ioan. Quo iure
defendis villas
Ecclesiarum? & Dec.
1. dist. 8
The place is in
Aug. tom. 9. p. 25.*

(1) *Ex hoc vide-
re quod tantum
iure humano ali-
quæ possideantur,
& non divina.
With anverso
an objection.
Vid. Gloss. num
iure Divino. 16.*

(2) *Mambrat an-
tequam vimer in-
veniretur, omnibus
inconcessa libertas:
Nemo sciuit a
consorte nat- va sue
obsequia servituti
exigere. Non esset
hæc servitus, si ebrietas non fuisset. As if a drunken mischance were the parent of this lasting inconve-
nience. Dist. 35. Sect. 14. c. Sexto die. Sect. Mambrat. (3) Dist. 1. c. Iure naturali. (4) Gloss. Al. ad c. 1. omnes Leges.*

(5) And though Dominion be by Nature, at large, that all is mans: yet the distinction or partition of Dominions, that such or such things should belong to such or such a man, is from use or introduced civil compacts. Gloss. præf. subesse. Extrav. 1. de Massu & Obod. c. 1. in fin.

ginning, where we have, that (*) The Law naturall differeth from Custome and (super-induced) constitution; for by nature All things are common to All, which was not only observed of those *Act. 4.* but formerly among the Philosophers: Whence *Plato* counts that City best governed where none covets property to himselfe: But by the Law of usage or agreement, This is mine, That anothers. And *Gratian* proves it by a place of *Augustine*, *Iure Divino*, *omnia sunt communia omnibus*, (*Iure constitutionis, Hoc meum, illud alterius*, is the title of that prooffe,) who speaking to those that thought themselves wronged by deprivation for Heresy, He asks: By what right they had their livings? of God, or Man? The one is in Scripture, the other in royall Lawes: Now whence, saith he, are (your) Possessions, but by the last? for by the (1) first, (*The Earth is the Lords, and the fulnesse thereof*;) He made rich and poore alike, and preserves them alike: But by mans Law we say, This is my Farme, this is my House, this is my (2) Servant. And why are humane Laws the Emperours? Because by them God distributes their own to the people. Where the glosse is full, That Possessions are only founded in humane Lawes. And the Text againe, Take away Imperiall Constitutions, and who can say, This is my House, this is my Slave, this is my Living, &c: and to the Emperours Laws forbidding Possession to Non-conformists, some answering, what have we to do with Emperours? Nay, and what have you to do with Possessions? Replies that Father, Quickly; for Possessions are by These: whom if yee renounce, your possessions are therein involved. This is full; somewhat dark is that before of (3) *Communis omnium possessio*: And before that, the (4) glosse makes a doubt upon the speech of invading anothers, *Nonne Iure naturali omnia sunt Communia*? How this? Is any thing anothers? And answers, True: as things are Now. Whereupon the note on the glosse; *Omnia sunt* (5) *communia Iure Naturali*: as plaine as can be.

This

This may be enough for one piece, pretending it self to be a necessary supplementall additament to the Law Christian, or drawing out the general rules thereof in particular expedients (as severall cases require) for governing the Christian world: Next what sayes *Iustinian*? He chiefly insists on one branch, indeed the matter of superinduced servitude, yet so as the length of his reason duely extended, will serve also well enough to hem in all other Dominion. In each part of his Compositions he hath somewhat tending this way. In his Institutions first, where servitude (he (6) sayes) is a Constitution of the Law of Nations, whereby, against nature, men are subject to the commands of others: (the very Syllables of (7) *Florentinus* in the Pandects before) *contra Naturam, id est, contra Jus naturale, cum eo jure omnes homines liberi sunt*, sayes the Glosser there: (for by Nature all are free) from divers Authorities. Nor are they impertinent: for in the next (8) title but one, speaking of Manumissing, This freeing from power (saith he) derived it self (onely) from the Law of Nations, or agreement: for by the Law of Nature all men were born free, neither was releasing known, sith there was no such thing as Bondage. But after that by the Law of Nations this Bondage was brought in, then came there also along therewith possibility of Freeing. So now of one sort of men at first, there were thus made three; Servants, Born, and made free-men: (the very Syllables (1) of *Ulpian* in the Pandects again.) And *tit. 8. de his qui sui vel alieni juris sunt*: Servants are in the power of their Masters, which (2) power is of the Law of Nations: And (3) before, Captivity and Slavery are contrary to the Law of Nature; for by this Law all were free from the beginning: And this continued also to the Novels: For in that supplementall addition to all former provisions of *Code, Pandects, and Institutions*, The Law of Legitimation there tells us, that (4) Nature made

(6) Lib. i. tit. 3. sect. 2. vide etiam *Artib. Polit* lib. 1. cap. 2.

(7) P. de statu hominum. L. Libertas. *And*, Quod attinet ad jus civile, servi pro nullis habentur: non tamen & jure naturali: quia quod ad jus naturale attinet omnes homines aequales sunt. De diversis reg. l. 1. aut l. 32.

(8) Que res (manumissio) à jurgentium originem sumptis: upotè cum jure naturali omnes homines liberi nascerentur: nec esset nota manumissio cum servitus esset incognita: sed postquam jurgentium servitus invasit, secutum est beneficium Manumissionis. Et cum uno communi nomine omnes homines appellarentur, jure gentium tria hominum genera esse ceperunt: Liberi, & his contrarii, Servi, & tertium genus, Libertini, qui desierunt esse Servi. *Insti lib. code* = tit. 5.

(1) F. de *Insti* & *Insti*. L. Manumissiones. Sect. 3. & vid. F. de *condict. indeb.* L. Si id quod.

(2) *Insti*. i. tit. 8. Sect. 1.

(3) *Legis* *cod. tit.* 2.

(4) Natura servum & liberum non discrevit, sed liberam hominis fecit prolem: *and a little after*. Neque enim a principio, quando natura sola sauebat, non inis (antequam scripte provenirent leges) fuit quidam differentia naturalis, atque legitimi, sed antiquis parentibus antiqui filii mox ut procedebant, fiebant legitimi. Et sicut in liberis natura quidem liberos fecit omnes, Bella vero servitutem adinvenerunt: sic etiam hinc natura quidem legitimas produxit soboles, atque ad concupiscentiam diversio naturalis eis im miscuit. *Novell. 74. cap. 1.*

all.

(5) Natura siquidē ab initio dum filiorum procreaciones sanciret, scriptis n. indum positis lib.ibus, omnes similiter quidem liberos, similiter autem produxit ingenuos. Primo namq; parentibus primi filii, similiter autem legicimi à natura hēbant: bella vero & lites atque libidines & concupiscentiæ causam depoluerunt ad aliud schema; servitutem namque invenit bellum, Naturales autem castitatis casus, &c. *Novell. 89. cap. 1.*

all children free at first, it was war brought in Bondage: Even so by Birth all were sons, and one as another at first, after-provisions made distinctions. And endeavouring soon after to collect and binde together all former resolutions on this great subject to be represented in our view, he both (5) repeats this Assertion (6), and Phrases, to Liberty, to be a restoring to Nature. Now that what is thus dispersed of freedom and servitude onely, may be enlarged by like reason to all Community and restraint, we are beholding to the Glosse on (7) *Instit. 1. tit. 2.* which stretches out one place, as all other may, thus, Wars and servitude are contrary to the Law of Nature, said the text; and what is meant by Wars? Manumission, Restitution, Rule, Dominion, and such other things, sayes *Cujacius* on the place: And upon the other of *tit. 3. §. 2.* Slavery is by the Law of Nations (8), therefore (he infers) Domination is from the same; and therefore, say I again, not from Nature. Wherein the text also seems to bear him out (and me;) for thus (9) *Hermogenian* in the *Pandects*. By this Law of Nations (whereby Manumissions were possible, as before) were Wars brought in also, Provinces distinguished, Kingdoms erected, Dominions settled, Fields enclosed, and many such superinducements, which Nature in her Dictates never acquainted with: the good wisdom of Man having found them out for quiet of societies, and the great goodness of God and religion approving these humane inventions.

(6) *lib. cap. 9. & bo-*

ferre. Licet igitur (sicut prædiximus) patri si legitimam non habeat sobolem, filios restituere naturæ, & antiquæ ingenuitatis. *Novell. 74 cap. 1.* & offerre Imperatori precem, hoc ipsum dicentem, quia vult Naturale, suos filios restituere naturæ & antiquæ ingenuitatis, & legitimorum juri. *cap. 2.*

(7) Bella, captivitates, servi ut es, postliminia, manumissiones, ut sacro ancti sint hostium legati, Regna, Dominia, Obligationes, Acceptiones, Constitutiones, sunt juris Gentium. *G. off. 13. Bella.*

(8) *Gloss.* Constitutio juris Gentium, &c.

(9) Ex hoc jure gentium introducta Bella, discretæ Gentes, Regna condita, Dominia distincta, agris termini positi, ædificia collata, commercium, emptiones, venditiones, locationes, conductiones, obligationes institutæ: exceptis quibusdam quæ à jure civili introductæ sunt. *F. de Justitia & Jure, L. 5.*

Nam Dominia rerum sunt de Jure Gentium, and that Text alledged for it. *Gloss.* generali Juri ad Cod. 1. tit. 22. l. Omnes cuiuscumque.

Yet farther, and from the same Volumns it is observable, that of that first universall freedom, some foot-steps are by the same Emperour allowed to remaine yet not cleane wiped out,

out, and of that naturall liberty of things, never yet brought within the bondage of any accessary restraint, some evident both signs and instances: For, (1) *Quedam naturali jure sunt communia omnium*, (yet in despite of any offered inclosure) *quedam publica* (id est,) *populica*, sc. *omnium populorum*, as the glosse) *quedam universitatis*, *quedam nullius*, *quedam singulorum*, so and no more. And hee gives instance in Ayr, water, Sea, Shore: who has endeavored to (2) inclose and appropriate these, or not given to every man to make use of their bounty, as his occasions should bring him to need them? The River to row, the Haven to entertaine, the Bank to Land, Theaters, Temples &c. Hee might have added also High-ways, which have never yet cast off their opennesse of former freedom, or come within the bonds of any private restraints; but in all Grants been still reserved and retaine to themselves yet what they were at first, and are, and ought to be, *via publica*, without any allowed restraint, and for every mans use that can use them. Crafty appropriations have or can no more hedge in these and some other gifts of God and Nature, (or God by nature) then the rich can impale to their own use the Sun-beames, or cause the same light not to shine to their poore Neighbours comfort, as well as their own, or the enriching raine to fall upon Their own Land, and leave the poore mans barren.

Thus the current of *Justinians* works: That wise Law that kept the World in awe, durst never, never did declare against all Community. Plainely it speaks things left at first Common, Servitude is by after-inducement; Property as Servitude, and no such universall restraint yet; but some things remaine as free as the Wood for the Bird to come and sing on what branch she pleases, or as the Sun-beames for which the poore man payes no rent, or dreads no quarter day; or like the Fountaine to the wearyed Passenger, hee may drink what he will, and leave the rest, and no one questions, interrupts or molests him.

Come we now nearer home; and what said here our Doctor *Bracton*? he was a great Civilian; and some say not only

(1) Instit. 2 de rerum divisione in Princ. & F. de divisione rerum. l. 1. 2, 3, 4, 5.

(2) Understand, in the Empire: for some kinde of appropriations of some of them has been wick us made to the King, as shall be said.

only so, but such, a Doctor of the Civill Law, to bring home (as he has) and mixe many of the *Effata* of that more Civill Rule with our barbarous Customes. 'Tis true, he makes often use of the *Code* and *Pandects*; and that which is more, many of his Rules are borrowed *verbatim* from them, and so does his Follower, and in most transcriber *Fleta* also; though I wil not enter much dispute of their Doctorships. They are to us a kinde of (1) Oracles, and borrowing their Inspirations from where before (wherein they were at least well studied, if not graduated,) wee are not to wonder if they wrote much the hand of that Copy according to which we see they did practice to write. The former first in very perfect imitation, instances chiefly, as *Iustinian* did, in superinduced servitude, which (2) he sayes, is by the Law of Nations, whereby against Nature, one man is subject to another: And the like assertion he lets fall (by the way) not long (3) after (*potestas Dominorum in servos a jure gentium est*;) with the same enlargement to all restraints as the *Civilian* taught: (4) Some things are common, some publike, some Corporations, some no ones, and some every ones: And as by Right remaining yet Common, and according to Nature, he instances in Water, Ayre, Sea, and Shore: which retain their primitive universall freedome, and were never yet in bonds to any.

(1) Scriptores hujusmodi apud nos, (as these, *Thornem, Britton, &c.*) inter eos quorum doctrina pro ornamentis tantum orationis, in disputationibus juris nostri forensibus scholasticisque esse possint, nec auctoritatem se ferant, vulgo censei solent; idque non sine authoribus magnis. Quod mea sententia (tantorum virorum pace dictum sit) non citra errorem ex incogitantia ingentem orum proparatumque.

Tamen enim ob veritatem ac intervenientes quæ inequitæ sunt juris mutationes admodum multiplices; auctoritatem in quamplurimis jam non præsent ejusmodi quæ decisionibus, Iudicis Consultationibus per se solum sufficiat, innumera nihilominus continent, quæ aut etiamnum manent integra nec omnino abrogata, (ut in materie maxime feudali, criminali, &c.) aut quæ mores majorum legelique avitas mutationibus ejusmodi priores copiosius ostendunt. Atque ita certè tam auctoritatem è qua juris interpretatio pendat eos habere manifestè in disputationibus forensibus scholasticisque est agnoscendum quam Ornamento esse. *Selden, Dissell. ad Flet. cap. 1. Selt. 3. p. 454.*

(2) *De Rerum divisione. lib. 1. cap. 6. Selt. 3.*

(3) *Lib. eod. cap. 9. Selt. 3.*

(4) *Lib. eod. cap. 12. Selt. 4. & 5. Add wheretowhat a lesse before*: Manumissiones animæ juris gentium sunt; Est autem Manumissio datio libertatis, i. e. detectio secundum quosdam, quia libertas quæ est de jure naturali per jus gentium auferri non potuit, licet per jus gentium fuerit obfusca: Iura enim naturalia sunt immutabilia. — Item ex hoc jure introducta sunt Bella, cum ad tuckionem patriæ inducuntur à principe, vel propulsantur violentiæ. Ex hoc etiam jure gentium discreta, i. e. separata vel divisa sunt gentes, Regna condita, & dominia distincta. Et non sunt dominia de novo inventa de jure gentium, sed ab antiquo, quia in veteri Testamento, aliquid erat meum & aliquid tuum, & unde tunc erat prohibitum ne furum fieret, & etiam tunc præceptum fuit, ne quis mercenarii sui retineret mercedem. Ex hoc etiam Jure gentium agris sunt termini positi, ædificia sunt collata & vicinata. — Et generaliter jus gentium se habet ad omnes contractus, & ad alia plura. 16 cap. 5. Selt. ult. Much to the mind and words of what was before from *Rome*.

Fleta

Fleta treads for the most part his steps, and it may not be pleasing to lead the same dance over and over, or to represent as a new Show, that which hath in it nothing of variety and novelty; wherefore I only (1) referre to him. And so for Dr *Cowell* late of *Cambride*, who professing to mould our Laws according to the patern of the Imperiall (*Institutiones juris Anglicani ad methodum & seriem Institutionum imperialium compositæ & digestæ*, is the Title of his Book:) In the second, third, and fifth Titles of his first Book, and first of the second, has the same parallel things, and near words; shewing indeed, that the Laws were parallels; and, which was his Plot, in these things both alike. I may not have omitted the Student to his Doctor; the Anthour is both Grave and serious, and were he in transmittable Language, might gaine with time, and more Authority after some Centuries then he has in present: Besides other places, He delivers himselfe in his (2) Book thus: It is to be knowne, for satisfying the doubt how the property of a mans goods may be altered (as in an Out-lawry) without his consent; that, The property of Goods (he might have said, of Lands, the reason is the same; I beleeve he meant both,) be not given to the Owner by the Law of Reason, nor by the Law of God, but by the Law of man, and is suffered by the Law of Reason, and the Law of God so to be. For at the beginning All goods were in Common; but after they were brought by the Law of man into certaine Property, so that every man may know his own, then were conditions assigned; and so he proceeds to resolve his doubt, by that one condition (here) was then, that if a man were Out-lawed, he had nothing as a man not to be trusted, or an enemy &c.

(1) Villib. 1.
cap. 3. Sect. 1.
& ca. 5. Sect. 3. 6.

(2) Dial. 2. cap.
3. fol. 64.

Many other such plaine Assertions are partly in This, and These, and partly in other our next to Oracle-Lawyers, which joyned to what before; give, if not assurance, much probability that the truth is, and the nature of things was at first, as I say, or else there would not have been such conspiring testimony. Agreeing Witnesses is among the strongest of proofes, and a likely evidence that they all speak the truth, who all speak the same; and as in neighbour Buildings

D

their

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their help and assistance is mutual, and ones strength strengthens another; so here. The grave Rules these have been, and prevailing Mistresses, if I may so say, whose words have been obeyed to sway a good part of the past and present Christian World: and they should not have been empty Rattles, (*Vox & praterea nihil*, as he said of the Nightingale,) mear speeches or noyse that went for nothing: The Canon for the Church, the Civill for the Empire, and our Civill for our Monarchy; what can we look for more, or more Authorative, after so great and honourable attestations?

Neither hath the Realty of things been otherwise in existence sometimes, then according to the matter held forth in these Rules: There have been and Are, that have lived and Doe live accordingly: persons so composing themselves that they remaine happy without inclosure or guard, home or own, and they never saw yet reason (which they obeyed) to remove them from the benefis, (esteemed such, with all inconveniences) that they found and had in this they still thought their most expedient Community; some simple Indians retaine it to this day; they will not exchange their Liberty for our Wealth, nor their native, as we count it barbarous freedom; for whatsoever we esteeme better, richer, surer, and nearer, comming unto us under the name of our magnified Civility. They have not our advantages, so neither our inconveniences, our enriching Property, so neither our emergent vices and troubles. Take away this, there would be no place left for many of those we call Crimes that trouble the World, nor temptations to others, which it might be our happinesse to bee free from, and such as would perhaps goe much toward the balancing of the benefit of our Riches.

Besides, the Primitive Christians lived Thus too: Wee (1) know they did; and many principles of that Religion dispose thitherward. (Mark the just extent of my word and meaning; I doe not say, Thither; but, Thitherward, That way.) They began our religious pattern in a (2) Community,

(1) Vid. Act. 4. 34
& compare Hist. Eccles. lib.
2. cap. 16 pa. 17.
(2) Glorifying
God for your

professed subjection to the Gospel of Christ, and what follows? καὶ ἀπλότητι τὴ κοινῆς εἰς αὐτοὺς καὶ εἰς πάντας: for the simplicity of your Communion to the Macedonians and All, 2 Cor. 9. 13. and

and did not build so evident certainty any where for awhile, as in a flat Level. Give us their simple Charity, we should do the better without our quieting boundaries, or enriching property; make us so meek, humble, gracious, & disposed to be helpful to one another, (3) contented with any thing, charitable to All, as they were, we should the lesse misse, or perhaps not complaine of any misse at all of our troublesome wealth, nor the scale swaying to any sensible incommmodity by that losse, taking in the amends of our then from many vices and troubles most certainly freeing Community. For, (4) Covetousnesse would be a name, theft not in nature, wrangling Suites vanish, fraud remove, guile be a stranger, no injuries known or possible. Those many sprigs that shoot out of that accursed root, *Amor sceleratus habendi*, would not only be lopped off, but the root it selfe, the disorderly affection taken away, even to an impossibility; and with no riches, much innocency, great content, strange quiet, a banishment of many vices, and plenty and enough to every one, with our first primitive simplicity.

upon *infectures*, and in *Iapiteris Reges*, when Saturn was gone: Ille malum virus serpentibus addidit atris, *Frædrique lapos iussit* &c. id est, odium & invidiam & deum infecti hominibus, id *ibid.*

Though I confesse, this was either not generall, or lasted not long with those Primitive Christians neither, for by *Act. 11. 29.* we have private abilities fruitfull in beneficence; and Collections for the poore, which many wayes supposes propriety, *1 Cor. 16. & 2 Cor. 8.* and reliefe even amongst brethren (1) *1 Jam. 2. 15. 16. 1 Joh. 3. 17.*

tributio donorum de qua dixi. Creverat enim numerus Christianorum ad plurima millia inter quæ impossibilis erat hæc communio. *Cornel. a Lap. in Epist. iacob. 1. ver. 27 pa. 72.*

But the meek *Essenes* continued so; whose precepts (many of them) hold much correspondency with the ancient Christians, and if they were not such, or their forefathers immediate, many have been deceived (2) who thought them so. Now these trod in the steps of *Justinian* *ἡγούμενος*

rom. 1. Euseb. Hist. Eccles. lib. 2. cap. 15. 16. Huic libro Philonis (de Essenis) Suidas titulum tribuit: de vita Christianorum. *Christophorus annos. 16.*

(3) Malebant tenui contenti vivere cultu; ut *Cicero* of *hu. Atque*: quod est proprium nostra religionis. *L. liam. de Iustitia. lib. 5. cap. 5. vid. L. 1. c. 2 14. Phil. 4. 11. 1 Tim. 6. 6. 8. Heb. 13. 5.*

(4) Nondum veniens: rabies nuda: daverat enses: Nec consanguineis fuerat discordia nota: *Thucyd. 1. 1. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.*

(1) Tamen cessabat illa communio & di-

(2) So *St. Jerome*, expressly Caral. Illust. virorum in Ph. long. pa. 102.

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and from all servility at first, which they hated as unnaturall and unhumane, they went on to place in the same cause All dominion or domination. Two sorts of them there were ; The Students, and the Practiques : (I compare them in some things, with the Secular and regular Priests ; some are for Conversation , other should be more for Meditation and Contemplation ;) but both of them went together in This same way : Take account of them of those are likelyest to enform us. *Philo* an *Alexandrian* (3) Jew, and I think Priest, tells of the (4) former : That they are not served by Servants, which they account quite besides natures intention, who made all Free : It was the greedy iniquity of some (5) domineering Tyrants, who having gotten power into their hands (perhaps intrusted) changed their rods into Swords, and turned their own Canon given for defence against their own Subjects, and having gotten their fellows down, kept them (by strength only of their cruell clutches) and of no more right then force, continued the Usurpation over their subdued fellows. With them, no such thing ; for no servant, but all free ; any farther then they did in love serve one another : So the service was performed (mark, their servants then were in lower condition then ours ; slaves or worse, which made the condition seem to soft and mercifull men so unreasonable and hard) but by no Tyrannicall constraint : the younger served the elder, they took care of the younger, each in love ; and no feare, scarce awe : But every one made necessary Offices his voluntary duty , and thus service with no commandement. This is the substance ; I stick not exactly to the words : And for the other sort, the same Author in another Book ; Servants among them

(3) Nazione Alexandrinus, de genere Sacerdotum. Hieron. Catalog. Vbi paulò superius.
So in the Preface to Philo's works. p 1.

(4) In lib. de vita contemplat. p. 696.

(5) Very pathetically described by *Lat. an. Et. m.* Non tantum enim non parcipabant aliis si quibus aliquid affuebat, sed aliena quoque rapiebant, in privatum lucrum trahentes omnia : & quæ antea in usus hominum etiam singuli laborabant, in paucorum domos conferebantur. Ut enim servitio ceteros subjugarent, in primis necessaria vitæ subducere, & colligere ceperunt, eaque firmiter conclusa servare ut beneficia celestia facerent sua, non propter humanitatem quæ nulla in ipsis erat, sed ut omnia cupiditatis & avaritiæ instrumenta coraderent. Leges sibi etiam justitiæ nomine munitas, iniquissimas, in justissimasque converterunt, quibus rapinas & avaritiam suam contra vim multitudinis tuerentur. Tantum igitur auctoritate, quantum viribus aut opibus, aut malicia prævalebant. Et quoniam nullum in his justitiæ vestigium fuit, cujus officia sunt humanitas, æquitas, misericordia, jam superba ; & tumida inæqualitate gaudebant, altioresque se ceteris hominibus satellitum comitatu, & ferro, & insigni veste faciebant. Hinc honores sibi, & purpuras, & falces advenere, ut securum, gladiorumque terrore subnixi, quasi jure dominorum percussus nec parentibus imperarent. *lib. second. cap. 6.*

(faith

(saith (1) he) they have none but they do (2) in love (as the other) serve one another. They hate dominion both as unjust and impious, as clean contrary to Natures law, who made all men equal, not onely in name, but in reality. *Joseph* the son of *Matthias* gives the same (3) account; and (4) others: and for the enlarging this restraint from service to any Dominion else unlawful, as *Cuiacius* did, very pleasing is that the last named Hebrew Priest (5) recounts of them in his History of the wars of the Jews: They contemne (saith he) riches, and all things with them are common, neither is any among them richer then other. They have a law among themselves, that whosoever will follow their Sect (compare that of Christ with it, *Luke 14.33. Verily, verily, I say unto you, whosoever forsaketh not all that he hath cannot be my Disciple*;) must make his goods common to them all; for so neither any among them shall seem abject for Poverty, nor any great for Riches; but they have fitting equall Patrimonies as brethren. They hate Curiosity, &c. They have among them Procurators to oversee, (the very picture of the after-Cœnobite, and according to the import of that word) and use all things among them for their common benefit, and every one seeketh the good of all (compare *Phil. 2.4. Minde not every one his own things, but every man also the things of others*;) and those (Procurators) are chosen from among themselves by common consent. They have many Cities, and if any of their Sect come unto them from another (6) place, they give him any thing they have, as if he himself were owner thereof. (Let the Catechumene communicate with his Catechist so, *in pascis*, in all things. *Gal. 6.6.*) And, in brief, they go in boldly to those whom they never saw before, as if they were familiarly acquainted with them: And therefore when they take a journey, they onely arm themselves against thieves, carrying nothing else for their journey. (Compare again that part of our Saviours directions to his Commissioned and Itinerary Sanhedrin, *Luke 10.4. Carry neither purse, nor scrip, nor shoes, and salute none: and into what house ye enter, first say, Peace, &c.* and in the same house continue eating and drinking what they bring, &c. but more plainly to his Twelve,

(heads.

(1) In lib 2. d. 1. *omni probum liber*, p. 678.

(2) as *Gal. 5.13.*
(3) *Antiq. lib. 18. cap. 2.*

(4) *Montagues Aiti & Mon. cap. 7. fol. 73. &c.*

(5) lib 2. cap. 72.

(6) Patent eo-
rum feudalicia
minibus etiam
advenis idem in-
stitutum servanti-
bus. Omnibus
unum est prom-
ptus ium, unde
vestitus & mensa
communis sumi-
tur, &c. *Phil. lib. 1.*
ead. pag. 679.

Of Civill Right.

(heads of the Tribes, and each a resemblance of the Hebrews Policie,) *Provide neither Gold, nor Silver, nor Brass in your purses, nor Scrip for your journey, nor two Coats, nor Shoes, nor Staves,* Matth. 10. 10.) In every city one is appointed to take care of such guests, and see they want not cloaths or other necessities, which they never change till altogether unusefull: (yet fear no want, for they have a Wardrobe everywhere whither they come :) Amongst themselves they nor buy nor sell, but he that hath what may pleasure another, imparts it, and so taketh without leave of him whatsoever he needeth. Their labour is great to maintain this expence: their fare the same, eaten in publick, and with much reverence and devout thanksgiving: and though in all other things they are chiefly tyed in obedience to their Governours, yet in giving they may be as open handed as they please, save to their kindred, where they must have leave of their Supervisors.

Is not this a strange happy life! beyond rich! obscuring the glory of *Cesar* and *Crassus*! if not what ever else is here among mortals! and like to last too, by their perpetually supplying industry. Are they not more admirable for this, saith *Philo*, then for any wealth and abundance? I confesse I was faine to stretch my patience much to go on so far reciting, being like to stop many times by the way, my affections indeed scarce suffering my intellectuals to make their orderly paces forward; for I never saw, me think, in all my life any thing more admirable, or so much toward the best on earth, and beyond Royal and Imperial. And all this with little, with nothing: as the Apostle speaks, *Having nothing, yet possessing all things.* Give us, I say again, but gracious hearts, contented and humble mindes, lowly affections, and true Christian qualifications, fearing God and hating Covetousnesse, and we might be soon thus rich all, beyond the wealthy; All the poor in the world as their Lords, (and yet they never the worse) for, (no one greedily griping any thing) every one would shortly be Lord of all things. And to shew that this may last, (if we had but truly loving and not self-seeking hearts, such pliable and humane mindes, as men may have) the same *Joseph* tells us, that the same *Essenes* kept it from all

Antiquity,

Antiquity, being herein, saith (1) another, like the *Pythagoreans*, who held it also in their way, and yet wanted some good principles tending this way, that were both in the *Essenes*, and are in our Religion.

Behold here this speculation reduced to act, that what I said may then be, because it has been, and is: both heretofore and now the stage of this world represents examples in being to every ones view and consideration. Neither doth this contradict the Scripture: we shewed before thence some glimpses of light rather to countenance it, but there is nothing sure that forbids Community, or commands that Separation which breeds propriety in either page of the Old or New Testament. For the Old first; where the Story of the Creation tells us indeed, (2) The earth was made, stablished, & adorned, and the Parent of the Donation (all that was) that God blessed Man, and bade him Multiply, and have Dominion over the Fish of the sea, the Fowls of the air, and every thing that moveth upon the earth, with Herb bearing seed for food, and Tree bearing fruit for meat; and *Adam* particularly put into Paradise: But what parted place any one should have, or the fruit or royalty of so much ground with exclusion of others; or that a partition should be made, One to have This, Another That, this we read nowhere. After when things were (as it appears after) separate, (for *Cain* and *Abel* had their severals, *Gen.* 4.) and after that again confounded by the Flood, the following restitution to former state, if we view the renewed (3) patent of the supreme Lord, had not much more then the former, but spake much in the free and general language of the first donation: And if *Noah's* Posterity had after any Severals, (as we know they had) they were left to divide by humane discretion, and each to have no more then what by the Providence of God their own wisdom could mutually ascribe to one another. Which was done, *Gen.* 10. (Hitherto we finde no *Ius Divinum* what every one should have;) for the Islands were divided, and 'tis shewed by whom, *ver.* 5. and in *Peleg's* time the land (which I take to be the *terra firma*) *ver.* 25. (and *ver.* 32.) whence he had his name of *Peleg*, that is, *Division*. After what was

(1) *Gadu. Antiq. Heb. lib. 1. cap. 12. pag. 57.*

(2) *Gen. 1. 28, 29.*

Deus humano generi generaliter contulit jus in res hujus inferioris nature statim à mundo condito, atque iterum mundo post diluvium reparato. Hinc factum ut statim quisque hominum ad suos usus arripere possit quod veller, & quæ consumi poterant consumere. *Græc. de Iure Bel. lib. 2. cap. 2. tit. 2. pag. 127.*

(3) *Gen. 2. 3.*

Every moving thing that liveth shall be meat for you, even as the green herb hath I given you all things &c. So far from giving any hint of Appropriations, that from things, say they are here cast down in a heap, some fetch argument for a Community: as in Bellarmine de Bonis oper. in partic. lib. 3. c. 1. 1. Ecce non obscura rerum planè communio: vestigia occurrunt in donatione illâ. *Numinis, Gen. 2. 2. facit Mr Selden. Mare Claus. lib. 1. cap. 4.*

in

in the promise to *Abraham*, or *Levitical Law*, or execution in the Book of *Joshuah*, all know; but nothing to our purpose. Come we then to the New Testament: Is there required any such thing as this distribution, or bounds set, or appointed they should be set, what should be whose? If it be, 'tis very obscure, and the lines so dim that mark it out, that they and it are by any ordinary eye very hardly discernable. Our Saviour bids, give to the Poor, and to *Casar*, and to every one his own, and many such things, supposing Propriety, but then the Propriety was before; He nowhere raised fence, but intimated and insinuated it should be kept. They would once have * made him a King, whereby he might have grasped dominion into his own hands in gross, which he might have afterwards given out by retaile: But this he peremptorily (if not scornfully) refused, because (1) his Kingdom was not of this world. The manner and course of his life we all know, and that we must make the best of it, to advance it above Indigency. He often complaineth he had not a house

* John 6. 15.

(1) John 18. 36.

(2) *Matth* 17. 27. Observe: And this he did that he might be able to satisfy an unjust order: for the children were free, of whom he was: So far from countenancing the establishing of any new Power he might seem to set up, that meetly because his quietness should not give offence (*iva mi skavdaxistowley*) he readily submitted to the unjust power that was. Sure his Kingdom is least of this world and worldly Dominion. As sure, his Religion rightly taught, or Power duly used, will have no operation to hurt any Powers, if just, be they what they will: Be subject to humane Ordinances as yee finde them, is the pith of the whole; Be contented and quiet, much of the duty of a Christian, as to the publick.

(3) Man, who made me a Judge, or a Divider over you: *Luke* 12. 14. To decline what in the same expresse syllables, (as it is in the *Septuagint*) was objected to *Moses*, *Exod.* 2. 14. *Contentus dare Precepta generalia, que ad res quasvis accommodari a volentibus facillime possunt, singularum negotiorum me non immisceto.* Grot. ad loc.

to put his head in, and was fain to (2) create as it were a doller to pay his tribute: so little he medled with wealth or worldly Possessions. There was some of this very work brought unto him, an (3) Inheritance in gross, which he was requested to be so charitable as to divide, to part strife between brethren; but he would not intermeddle for that reason which also constantly swayed with him in his whole course, he would be no medler, no divider of Inheritances. He did not finde any fault with the thing done, forbidding it should be put in practise by others, but rather approves of what he found, by the just measure of his Acts and Words heeded: for, (argue from his silence) he laid not the block of any prohibition in the way, having just occasion; permitting thereby, no doubt, other persons, Corporations, States, or Laws to do what they should think good, (which is enough against all

all Levellers) and he approves and ratifies what they shall do for their convenience, by the same reason for which he would not divide, for neither way would he meddle: Nor should the Court-Christian interpose in secular Affairs, or Religion disturb the quiet world, but leave things as they are found, and let worldly men dispose as they will their worldly Inheritances. Considering (in our depraved estate) the Corruption of our Nature, it can hardly be conceived how we should do well, or frame to quiet (so many as there be of us, and of manifold mindes and tempers) without partition, which might render it necessary he should (*à posteriori*) approve those by Laws the Community of men shall make for quietnesse and stinting the Common, which he does in submitting, and commanding to submit to the Powers that were: But that he should take the matter into his own hands to formalize properties, or erect or give order for any set Courts to order or dispose of them: This I believe will never be made good from any thing He or his Apostles did, or 'tis said, that they either effected, or intended, or gave any necessary command for any such thing, or so much as that Partitions or Proprieties must be, from any leaf or line of the Old and New Testament. They may be, as shall be said next, and these do not contradict but confirm; but that they should and ought, this is not shewed.

Wee see then, as to the first Proposition, that Propriety is not necessary, nor was it natural: The Canon, Civil, and Common Laws found all left in a Community: some simple Nations continue so still: the first Christians began in a level: The *Essenes* held it up long with great applause, nor is any thing in Scripture found in prohibition of continuance, if we had but gracious humility, and true love to make us capable of so great a happiness. But yet then we are in a wilderness: And what must we needs stay there? Nature indeed made not, commanded not partitions, nor God (the revelation of whose will is wholly spent at utmost in toleration.) But may not the wisdom of man proceed further by Gods permission? though not *ex vi præcepti*, by force and impulsion of any strict command, yet by taking the leave, seems given, in that

(1) Ratio nihil
aliud est, quàm in
corpus humanum
pars divini Spiritus
transmissa. *Sen. ep.*
66.

it is not denyed: Questionless, yes, Humane (1) Prudence is a ray from God, shining dimly in the bottom of mans earthly heart, and has not hitherto directed all men amiss that by the light thereof have found out any Good; their own, or that they had an own, or that an own was, or might be. God loves man so well, that he Loves every Good of man: the Good of Society, the Good of Order, the Good of Peace, the Good of Benefit, even to that outward Bestial part, whereof yet the divine Soul is a blessing and sanctifying inmate. All which Goods being so nearly concerned and highly advanced by, This is Mine, we cannot look upon our good God as carelessly neglecting, or enviously nilling that man should reap any fruit or benefit of that wisdom (which is also his gift) whereby he is enabled to finde out any of these Goods so much for his glory; whence, with much likelyhood, ariseth this second Proposition, That although God and Nature left things at large, yet

There



CHAP. II.

Propos. 2.



Here may be impaling (2) propriety; for else much of the Good even of Good things would be lost; the strong 'tis like) would tyrannize over the weak, the lazy partake as much fruit of his vice, as the industrious of his diligence; at Harvest, he that laboured should reap no more then he that loytered; and supposing the most evidently seene corruption of our nature, that (3) which should be Every ones, (to take care of and enjoy) would be No ones: Nor could confusion but be the fruitfull mother, bringing forth many daughters worthy her selfe. Besides, argue as Christians: The Law would be superfluous, the Commandement evacuated, *Thou shalt not steale*, Nothing; for there wou'd be nothing to steale, or have. No poverty, no riches, no purloynng, no restoring, no fraud, no injury, no wrong, no right, which are all founded in *Meum & Tuum*, & would be taken away even beyond the very roots, to an impossibility, if these be taken away. No charity to Neighbours, no hospitality to Strangers, no bounty to Friends, no more then most magnificent Christian bounty in relieving Enemies, if &c. Yea, the exercise of all Christian and morall vertues, that act about giving and receiving, were not only suspended, but presently deprived of their very being. No making bags which wax not old, which our Saviour

(2) Though so necessary all is still loose positive, yet for Dominion, only negative, i.e. that they are not actually divided, sed tamen permiscum est ut dividetur, si id ipsi generi humano videretur expediens. Quemadmodum cum paterfamilias moritur, & filios in communem relinquit heredes hereditas quidem est eis ex testamento Communis, sed negativè, non positivè: Et ideo nihil prohibet, quo minus eam inter se dividant & una pars unus, altera alterius efficiatur propria Bellum, de bon. ap. in partic. lib. 3. cap. 11.

(3) Minimè autem utile homini

nibus fuit quod hujusmodi habuerint in Omnia jus Commune. Nam effectus ejus juris idem pnceest, ac si nullum omnino jus existeret. Quamquam enim quis de re omni poterat dicere, Hoc meum est, Frui tamen ea non poterat propter viciniam. qui equali jure & equali vi precebat idem esse suum. Th. Hobbius de Cive, cap. 1. sect. 11. & vide cap. 2. sect. 3.

Luke 12.33.

1 Cor. 16.

1 Tim 6.17.

Philem. v. 18, 19.

1 am. 2. 2.

counselled: no collection for the poor Saints which are at *Hierusalem*, which the *Corinthians* used: no laying of a good foundation for the time to come by rich distribution, which *Paul* counselled; & he was himself superfluously carefull of paying that debt of *Onesimus* to *Philemon*; he neither did, nor, as things were, could pay, because he, nor any body else, had any thing to pay. A hard word for Creditors, there could be no paying of debts: An impoverishing word for States, farewell all Tributes: The rich mans gold Ring and costly Apparell had been nothing else but a crime, or a gracing encroachment upon others Rights, which yet St *James* blames not, but preferment in Religion hereby: And, the poor man an impossibility, and empty name, a Nothing, forasmuch as poverty is by comparisons, (*felix nemo nisi comparatus*, nor yet miserable:) and this must be with the Rich, which yet is not, nor indeed One nor Other, nor Any one that has Any thing. In a word, all Sentences, Admonitions, Exhortations, Rules, Decisions, suppositions of Scripture everywhere could nowhere take place, unlesse the Community left by God and Nature, might be ascertained and severed by the following prudent constitutions of men, and after-Lawes; and a good part of the Book of God would bee but an empty Letter, without sentence or sence, if all those words stood voyd of meaning, which doe not require, but suppose appropriations. Take together what Mr *Rogers* has, plain: but substantiall upon the 38 Article of the Church: The Article it selfe, is in direct affirmation of what we say, *That the riches & goods of Christians are not common, as to the right title and possession of them, as the Anabaptists vainely talk, though every man be bound to distribute largely:* (agreeing herein with the 65 Article of the Church of *England* :) upon the first position, whereof thus he: *Against Community of Goods & Riches be all those places (which are infinite) of holy Scripture that either condemn the unlawful getting, keeping or desiring of Riches, which by* (1) *Covetousnes,*

(2) If any that is called a brother be a fornicator, or coverous, &c. with such eat not, 1 Cor 5. 11. Covetousnesse, let it not be once named among you, as becometh Saints, Eph. 5. 3 Beware of Covetousnesse, L. ke 12. 15. which is Idolatry, Col. 3. 5: the root of all evil, 1 Tim. 6. 10. Let your Conversation be without it, Heb. 13. 5.

(2) *Thee very,*

(2) *Theftory*, (3) *extortion*, and the like wicked means many do attain: or doe commend (4) *liberality*, (5) *fingality*, (6) *free and friendly lending*, (7) *honest labour*, and lawfull vocations to live and (8) *thrive by*: All which do shew that Christians are to have goods of their own. Thus far Mr Rogers according to his Text, of which thing there was so much regard that a little before the composition of those Articles, it was intended to have been marked for an Heresy to be of a contrary opinion: *sc.* in the intended Canon Law by vertue of some Statutes in *Hen. 8. & Edw. 6.* time: where if the 32. had proceeded, as in part they did, and their conceptions received life, and quickning power by setting to the Seale of due and lawfull Authority, it had been then (9) the 14th of the heresies there to be condemned, to maintain Community. But those Canons were onely cast, not mounted, not ever yet of power to do any Execution in this Church or State: But others have plainly, fully, and actually (10) spoke it out both heterodox and heretical. Bishop Hall long since preached with applause enough upon 1 *Tim. 6. 17.* that certain Hereticks, called the (11) Apostolicks, before St. *Austines* time, in his time our Country-man (12) *Pelagius* (or (13) *Morgan*, for that was his true name here, because he dwelt by the Sea, at least the name imports so much) and since divers Separatists have maintained Community, al-sufficiently confuted by the word of his Text, *Charge the Rich.* 'Tis also laid to the charge of the Manichees by S. *Austin* (14) of *Julian* the Apostate, by and namely those of his own household, he denyeth the faith, and is worse then an Infidel, 1 *Tim. 5. 8.*

(6) From him that would borrow of thee turn not away, *Matth. 5. 41.* Lend, looking for nothing again, *Luke 6. 35.*

(7) Let him that stole steal no more, but rather labour that he may have to give, *Eph. 4. 28.* Wee warned you, that if any would not work, hee should not eat, 1 *Thef. 3. 8.*

(8) Their hands have ministered to my necessities, and those that were with me, *Acts 20. 34.* Wee laboured day and night, that we might not be chargeable unto any of you, 1 *Thef. 2. 9.*

(9) *Excludatur etiam ab eisdem Anabaptistis inania bonorum & possessionum communio, quam pauciores agunt, ut nemini quicquam relinquatur proprium & suum: In quo mirabiliter loquuntur, cum scripta prohibens divina scriptura cernant, &c.* Reform. Legum Ecclesiasticarum de Hæresibus, cap. 14. pag. 14.

(10) In his Sermon called, The richuous Mamma, not far from the Beginning.

(11) Vide Epistolam heres. 61. pag. 305. August. heres. 10.

(12) August. Epistol. 89. contra Pelag. & Manich. Quæst. 4. tom. 2. pag. 151. & Epistol. 106. contra Pelag. page 185.

(13) Nam *Mar aquor*, pelagus; *can* apud vel juxta significat. *Spelman Concil* pag. 46.

So *Pelagius* in Latine gives and is given by *Morgan* in Welsh, or, as wee would call him, *St. Sea* in English: which name is contracted and used frequently enough at our Sea Coasts,

(14) *Lib. de Moribus Eccles. cap. 35. tom. 1. pag. 331.*

(1) Let none of you suffer as a Thief, 1 *Pet. 4. 15.* Servants, no purloyners, *Tit. 2. 10.*

(2) With a brother extortioner eat not, 1 *Cor. 5. 11.* Nor thieves, nor covetous nor extortioners shall inherit the Kingdom, 1 *Cor. 6. 12.*

(3) Blessed to give, rather then to receive, *Acts 20. 35.* yea and that thing ye doe to all the Brethren throughout Macedonia, 1 *Thef. 4. 10.* If a Brother or a Sister be naked, and destitute of daily food &c. and ye give them not those things are needs full for the body, what profiteth? *James 2. 15. 16.* & *Vide 1 Corinth. 9. 6.*

(4) If there be any that provide not for his own,

(1) *Oras. 1.*
emera Julian.

(2) *In the life*
of Clem. 5. fol.
431.

(3) *Th. Munce*
cried is up strongly
in Germany, Schl.
Comment. lib. 5.
in Princip.

(4) By whom
they are also stid-
led *Dreamers*,
(whose great pre-
sence of quicker
reason then ordi-
nary is scarce yet
half awake) that
defile the Flesh,
(and yet pretend
the Spirit)
fleighting not
onely *Demonium*,
but *Demonium*, the
civil Magistrate,
and the Magis-
tracy, blasphem-
ing Divinities,
and yet *Moses* did
not saile at the
Devil, *ver. 8. 9.*

so notoriously bad: that as a great Mountaine that is onely visible at a distance. *Enoch* the seventh from
Adam could fore-see, and did fore-shew of them then: *γογγυσαι, μεμψιμοιραι, κατα τας ον-*
θυιας αυτων τοσδε ανθρωποι. discontented men, alwaies finding fault with their lot or portion, (be it
what it will) walking after their own lusts, or greedy covetousness, and yet confident, that will speak
any thing, &c. *ver. 16.*

Gregory (1) *Nazianzene*, of *Dulcinnus* and *Margarita*:

among the *Novatienfes*, by (2) *Caranza*, and the *Familists* and

(3) *Anabaptists*, all Sects, or names of hatred and averfation

enough that they would down with all Fences, remove all

Boundaries, unsettle the Land-marks, and restore all Inclo-

tures again to their first and natural Community: which cer-

tainly they could nor can others ever do without bringing

themselves within the compasse of those *ανωμαλοι και ανυπαταχοι*,

ungoverned men, 1 *Tim. 1. 9.* *ανιστασθεις εν τη εκκλησια*, meerly

croils to lawfull power, *Rom. 13. 2.* *κυριστηλα θ δε εντες*, in

(4) *St. Jude's* phrase, that regard not Authority a rush: yea,

ανυπαταχοι, μαλακολογοι και επενεπαται, men out of their wits,

as well as out of their duty, as *St Paul* to *Titus*. That the

corrupt, self-loving, deceitful, unjust world keeps it self either

safe, honest, or quiet, refers it self chiefly to these binding,

and to every man his own bounding laws and appropriations,

and, by consequent, to remove and tear them up, can be no-

thing else but to betray the world to misery and unquietness,

and all the effects of, worse then Poverty, Desolation and

Confusion.

Thus are we advanced two steps, and 'tis hoped on firm
ground: that partitions or proprieties are not of nature,
yet (of much need, and by Religion) they may be: How? is
the next enquiry; and this makes way to a third Proposition,
scil. that

That



C H A P. I I I

Proposition 3.

That which boundeth and severeth humane Properties is humane Law: which, for the ending of Strife, preservation of Peace, maintenance of Societies, and bettering that we call Humane Good, the wisdom of man hath found out, and the wisdom of God in his Laws (whether divine or natural) does not disallow but confirm, for the bettering the condition of our humane frailty, and making our troublesome earthly life more quiet, calm, and comfortable amid all our infirmities and tempest-breeding corruptions. This is that Chymists fire that sets the several forms in compounded bodies on work to excite and raise themselves up to cause division, and thereby separation, that the potential parts may come in single out of the heap, and that which might be distinct, may be. The fan that separates one thing from another, this from that, which were before in the common heap; the *Calamus mensura*, or mete-wand, wherewith (1) *Ezekiel* was to measure and fit the several proportions of the Sanctuary; and wherewith are measured out unto us every ones propriety, and limited and proportioned: The square, rule, sence, measure that helps to cut out properties and divide them, parts the common, and encloses it, appoints of the whole how much every man must have, imprinting the Characters of *Meum* and *Tuum* upon the divided parcels, and circumscribing each with (2) *Noli me tangere*, meddle not with an-

(1) Chap. 40.

(2) Ex domo
nō ad modum
jam d. cum pri-
vato introducto
evenit, ut terra
toti seu agri, cu-
jus usus universis
pariter erat in a-
rando, edifican-
do, depascendo,
arbores cadendo,
fructus percipien-
do, transiendo
liber, proprietas
ita possidetur, sive
per distribu-
tionem, sive per oc-
cupationem, pri-
vatum acquirere-
tur, ut is liberum
ejusmodi usum
jure posset impe-
dire, nec eius in-
jussum alius licite
uti posset. Ac-

que ab hac origine nanavit omnium rerum proprietatem seu dominium, quod sive alienatione, sive quacunque
aliqua cessione in alios transfertur, sive possessione retinetur, *Sed. Max. Claus. lib. 1. cap. 52.*

others,

others, touch not pitch least thou be defiled, lay not a greedy and unjust hand upon anothers, least it burn thy fingers. Would we have that which resembles *Di o's Thong*, where by she parted that which was hers, from his she bought her little plat of ground of, calling This, City; That, Countrey: This is it. Would we behold that Sea-banck, that bounds the raging and impetuous Waves, speaking in the word as 'twere of an Almighty Creator, Hither shall you come, and no further; Here shall your proud Waves be stayed; That restrains, I mean, the raging, ravenous, impetuous, insatiable desires of mans greedy, restless, covetous minde, telling him, He shall have This, and no more, It is enough. He must and ought be therewith contented. The Law, the Law doth this alone, letting up every one his *Hercules Pillars*, how far he shall come and no farther; His bounds that he cannot passe, nor turn again to any of that community he has thus by his own Act excluded himself from, and may not re-invade though he never so much desire it. *Tolle Jura Imperatorum, & quis audeat dicere, Mea est illa villa, aut Mens est ille Servus, &c.* as replied *S. Augustine* to some who asked him, what they had to do with Emperours? And a little after: *Per Jura Regum possidentur Possessiones*, The Laws of Kings give us our Lands: (which was worth remembring, having been laid down at large before :) And so the Student to his Doctor: The Law of Man gives man what is his, and therefore may regulate, and therefore may make conditions, one of which is such as there resolves the doubt in hand: And *Mr selden*, speaking of Right, and Civil Right, and the particular Right of these Dues we call Tithes, makes their strength here immediately founded in humane law. page 14. of the Preface to his History.

And this is very reasonable: for the Law is supposed every ones Act; what is thereby impaled, Every one to have at hand in the enclosing thereof, even he that would claim Re-entry, but has hereby excluded himself from any such just hope of: For, (1) *Quod tangit omnes, ab omnibus debet probari*, and supposed so done, that what is past in Law, is past by

(1) Reg. Jur.
Cen. 29.

by all, and therefore some endeavouring to give what Law

is, have described it to be nothing else

but (1) the agreeing voice of the Com-

munity. *Nil tam conveniens est naturali*

equitati (saith the (2) Emperour,) *quàm*

voluntatem Domini volentis rem suam in

aliū transferre, ratam haberi: There is

nothing more agreeable to natural equi-

ty, then that he that would have what is

his transferred to another, his will be

(upon signification) obeyed. If then I

had any thing, and transfer it to another,

or another his part-share in any thing, and

transfer the whole unto me, nothing more

equal then that he or I reap effectually the fruit of our

own acts, and in vain shall either endeavour to reclaim, or

blame any hard measure, if the thing so parted with, be held

fast, and not resigned, without the explicate act of (3) his will,

to whom it hath been sufficiently and fully intrusted; As when

the Tenants shall release to the Lord their part of the com-

mon, (or to one of themselves,) or nineteen co-parceners their

whole parts to the twentieth. Forasmuch then as the Law is

every ones Act, and what is thereby done, all have had a hand

in doing; Nothing is more fit then that what is done by it,

binde all, and be the parting thong, the bounding fence, the

last Arbitratour above any appeale; Because, whatever re-

straints, limitations, admissions, exclusions have happened to

be made by it, every man is supposed to have been at least the

part-maker of, and so ought not to go against his own Act,

nor attempt return to that himself has shut himself out from

by his own consent, ex-presse or implicite.

And this, as it is a sufficient title, so 'tis the best: unhappy

times, and worse the men, when the force of any storm shall

drive men from this anchor of safety, to shelter in any other

harbour their tottering propriety. Shall things remain in

their common Mass undivided? Then much of the good will

be lost. Or shall partitions be made out? I ask, by whom?

If by me, partiality may binde my eyes, or deprave my judge-

(1) Lex est commune Præceptum, viro-
rum prudentum consilium — Reipublicæ
sponsio communis, Brasſon. *de rerum Divis.*
cap. 3. & F. de Legibus, Senatus-consulto 1.

Reipublicæ sponsio, id est, interrogatione
factâ consule, & communiter à populo factâ
responsione quòd sic placeat esse statutum.
Glossa 16. ex rader. Omnes homines qui in
Rep. aliqua verſantur, faciliè consentire legi-
bus suæ civitatis, *as the notes upon the Glossa.*
*πόλεως ὅς (αὐθίχην κοινὴν, καὶ τὸ
πάντι ἀεστῆκεν ἐν τοῖς ἐν τῇ πόλει.
Maresm. lib. 1. Nam & Demosthenes.*

Lex vocabulum in contractibus in toto
Iure nostro accipitur pro Conventione, &
docet Zasius, &c. *Kable. Lex. l. ord. ag. 5: 6.*

(2) *Instit. 2. de rerum divisione. Sect. 40.*

(3) *Id est finem*
est quod privatim
possidet Domi-
nus, ut alijs
esse, ejus injustis,
omni jure esse
nequeat. Seld.
ubi supra.

ment to carve ^{too} much for my self, too little for others. If I refer it to my neighbour, he may be guilty with me of the same infirmity. Shall both refer to some third good man? nothing is more miserable then to depend of anothers will, and to wait his Courtesie, especially for the things of life and necessity. I may starve, while he think me not in any want, and being an unexperienced Judge of another mans need, when I want meat give me Physick. The Law, the Law therefore is the fittest and onely equal certain Umpire between both, even before my self or any other; 'Tis an Oracle of Truth that never spake error, the Rule of Right that can do no wrong; Others passions may wrong us, or our own vices, but Justice never. 'Tis a sign of the worst times, when any mans will or judgement shall be made the mete-wand of another mans estate and sufficiency, and I shall have that he onely thinks me fit to have. He may love to day, where he hates to morrow, and give his passions leave monstrously to act, and then where am I for light to walk by, when the variable Moon turns her dark side toward me? Besides, if we, attended with those covetous desires, which never, but as a shadow the Body, attend our frailties, shall come to divide out of the common heap; I may say, my Neighbour hath too much; He, with more confidence, my disproportion is in the excess; A third, we Both, and then when our Judgements are thus divided, it will not be long ere our passions fight, armies are mustered, hot Pharsalian Fields pitched, and ere long spred with Carcases, and hardly avoiding this when any arbitrary Interpositions shall hinder that to be the Rule of every ones Own (and enough) which alone should, the Law. That therefore and that alone is, I say, the onely fit equall arbiter and Judge of what each State, Man, or Condition shall have, the firmest bottom for Rights to settle on, the onely carver and distributioner that hath both given and settled several men in their several proprieties. Happy are the daies when her voice is heard in the streets, Blessed the men that believe her Oracles: No work hath been done better of distribution or retribution, then what hath come through her fingers; no property is settled firmer, then what has her unmoveable

moveable Equity for a Basis to settle upon.

But now, forasmuch as she appeareth in divers forms, and the parts not onely different, but seeming crosse one to another, whence would follow shee may, according to her several *Effata*, seem still to settle things divers waies. It may be therefore needful to consider her several *species*, or indeed not so much their contradiction, as subalternation, (whereout is likely to be hammered also some other Observations,) and to this purpose I say, (setting aside that of the Canon into *Jus*, & *Fas*; *Humanum*, & *Divinum*.) Humane Laws are either general or particular. The first whereof, as having the whole, or most of Mankind consenting, doth therefore fitly obtain the proportionably spreading name, of the Law of Nations or universal; the other (like a by-law in a parish, made up in exception to the Law of the Kingdom) forasmuch as its made onely by some, and calculated for the Meridian of a particular place, is therefore as fitly stiled Local or Special. For Law it self is chiefly compact; a mutual consent among the Conveners, that such a thing shall be so or so: who happening to be either the Generality or some Few, the Community of All or a single Countrey, the Citizens of the world or the Citizens of such a city, Commensurate to the number of Conveners comes out a proportionably extensive Name, and of All or Some agreeing, we say, Law is either universal or particular, General or Special. Besides both which, there is also *Jus Naturale*, as a third branch, (or the law of Nature) usually so made: but because the reign hereof is also among brutes, perhaps among all Creatures, we reject it; first, as confining our selves to humanity: Then, for that that we call the Law universal or of Nations is often confounded with it: for because Nature taught it all Nations, therefore it may be called from the Mistress, as well as from the Subject, and so the Law of Nature is (as it commonly is used too) another name of the Law of Nations.

These things thus premised, make way for a fourth Proposition, and as hitherto things have been represented,

Of Civill Right.

left, 1. In Community, yet, 2. Restrainable, 3. By Law; so that Law being manifold (the latter, I note by the way, over-ruling the former, not so much contradicting as excepting,) and it coming to passe, thereby that Right may be settled by it accordingly many waies : *sc.* In the world, by the Law universal. In any place by the Law of that place; Hence my fourth Proposition: *scil.* that



Tha





C H A P. IV.

Propos. 4.

Hat which gives Legal or Natural Right universally in the world, is the Law of Nature, Nations, or universal.

I call them so promiscuously, for the reason before: and think they have power to give this propriety from another reason assigned a little before that, for that all seem to have passed their consent to the making of them. Nothing is more reasonable, (as was said) then that every man should be bound up by his own act: Forasmuch then as men seem to have agreed in the Law universal, and they have passed their consents to some such general Axiomes (*Generalia pacta Societatis humane*), as these; as that, What I have is Mine, unless there be better title; What I finde is Mine, Chance endowed me therewith; what does *accrescere* to my Field, is Mine by accretion, and the like; If a thing be by any of these waies transferred unto me, I have, no doubt, in the world a good title to it, and may account it justly Mine hereby, without any farther doubt or question. Whiles it was others, it was in their own power, but now (to allude to *S. Peters* killing Argument) sith they have parted and settled it with consent thus upon me, why should they go against their own act, and not but voluntarily leave unto me, what the Law, every ones Agreement, hath cast upon me? This is by some called the Law of Reason, because 'tis the work of Reason, the result of Reasoning, and that general Agreement in all mens breasts that runs through the world, hath stamped it for allowable, current and authoritative: what I have by it, I have then by
all

all mens allowance, and so Consent the life of the Law, and foundation of dominion cannot but have settled me a sufficient title and undefeasible.

Cum autem lex
Civilis aliud con-
stituit, eam ob-
servari debere
jus ipsum naturæ
dedit. Lex enim
civilis quanquam
nihil potest præ-
cipere quod jus
naturæ prohibet,
aut prohibere
quod præcipit,
potest tamen li-
bertatem natura-
lem circumscri-
bere, & vetare
quod naturaliter
licebat, atque etiam
ipsum dominium
naturaliter acqui-
rendam vi suam
antevertere.
*Grot. de Jure
Bell. pag. 133.*

Thus it obtains generally, but in some particular States or places it may not be so : A by-law over-rules the Common (not by crossing, but excepting, as was said before) as in stin- ting of Commons, imposing penalties, &c. And so a particu- lar State or Kingdom may lay restraint where the general hath left at large, leaving the Gate of Liberty open, where the people of the world have shut it, or shutting, yea locking it up fast where they have left it open. This makes it needfull for me to consider where I live, and whether any particular ex- ception of the Place suspend not here the general Rule of Right and Righteousness? As if it do, what is Just in it self, is not now Just; That which should be mine abroad in the world, here is not mine. Whence ariseth a fifth Observation: That though 1. Nothing by Nature be mine, yet 2. somewhat may, which 3. the Law gives, 4. in the world the Law general: yet

In

C H A P. V.

Propos. 5.

IN any particular place, that which gives me full right and true property to any thing, in that place is *Lex Terra*, or the Law of that Place; either 1. confirming the general (which had put me in possession before) positively laying down, or negatively saying nothing; or 2. limiting, or excepting by some special title to me, and saying that in some new way there I shall have this or that settled upon me. Which be it how or what it will, and the local decision settle to my gain or loss from the general, yet am I to content me therewith, as being now there no longer a Citizen of the world, but a Citizen of that place, and must be satisfied to have the Right of my Right altered, disposed and transposed according to them and their prevailing topical constitutions and considerations. Most men love not onely variety but singularity, to have things go their own way, and it often pleases how much it is the more singular: If I light upon any such disposition in my self, cros to what I there finde, and it be much to my prejudice that Common Right prevaile not, as I would, I must not quarrel with my Stars, or wage war with a Multitude, setting the whole hive in combustion because they will not make honey my (seeming best) way; but meekly and quietly rather yeeld to be carried along in the passengers boat, then strive to draw all out of the way, to go my new way, though the better, tractably conforming my self to the orders of the Corporation I finde, rather then making a rent in the Body by seditious disturbances, and (so the things be not dishonest nor impious) make that rule in the Poet a Law to me,

Cum fueris Romæ Romano vivito more.

In:

Of Civill Right.

In short, this is sure, nothing is Mine justly in any place, but by the approbation and authorization of the place, whose only Law seals me a sure title, and without it I am nothing in whatsoever I possess but a crooked Usurper. While the world lasts, men will both love and go several waies; and though they keep, or are willing to be kept in by most of the general Rules seem agreed on by mankind, yet in some particulars, for clime, site, neighbourhood, religion, or if it be but for varieties sake they will vary: Here for me to plead the geneneral Rule (of Right or Equity) were to act indeed a good part, but on a wrong stage, and in truth to be a quarrelling, offensive, hurtful member which must be removed, and as a noisom humor purged out, unless I master and conquer mine own unreasonableness. The Law of the Place is that therefore I must conform to in the place where I am, and in that Charter finde the title of my whole Inheritance, or else it is truly and justly none of Mine.

But I am yet but as it were beyond sea, or nowhere. All this is nothing (immediately) to what is here, and what with us individually is chiefly to be regarded.

This brings me to my last Proposition, not so much distinct from that next before, as subordinate to it, or grafted upon it, and setting the truth thereof to the Clime and Meridian where we live, (for which all the rest was intended, and prepared,) and it is This, That

Here



C H A P. V I.

Proposition 6.



Here in England, that which gives me right or title to any thing, is *Lex hujus Terræ*, or Our Law. This is the Basis of all English property, and grand Charter by which every man holds his estate with us: The Fortune-teller, yea, the Fortune-giver, and Maker, and Creatour of all Right and Title among us, which lets in first light of possibility of fraud, injustice, or any wrong, and that alone gives place to the 8th Commandement, ever to take any place. *Thou shalt not steal*; for, *where is no Law, is no transgression*: if we had no right, we could have no wrong; and in bare taking how could I be accused to steal that which is no mans, but is now by law indeed anothers?

By Law here I understand that which under sundry heads has been of such force with us: As the Law of Scripture first, which is not here a Law onely, but a Law of Laws; whatsoever is here done against it, is *avoula*, as against the Law of the Land: and farther, if any Law be made against it, that Law is a grievance and an offence, and thereby both unlawful to obey it, and the order it self null, as more then revocable revoked, as if it were made against the great Charter. (Upon which ground also *Dismes* are here due, saies (1) a very good Lawyer.

*Dollor & Grad.
Dial. 1. cap. 6.*

Then have we the Law of (2) Reason, or Nature, or Nations, taken in likewise into our Code or Canon, so that whatsoever is done against the same (generally received) is against Our Law, as was said of the imbraced Scriptures

(1) *Id. ibid. fol. 11*
(2) *Rep. 7. Calo
vins. Cajo.
Doll. & Spindens.
Dial. 1. cap. 5.*

G

to

(1) Because it is written in the heart, it is never changeable by no diversity of Time or Place, and therefore against the Law, Prescription, Statute or Custom may not prevail; and if any be brought against it, they be not Prescriptions, Statutes, nor Customs, but things void and against Justice. id cap. 2 fol. 4. as a crooked Rule, made by a straight, to make right lines by.

As in the Empire: Omnes cupimus; majoris vel minoris administrationis universæ nostræ Reipublicæ Indices moneamus, ut nullū resciptum, nullam pragmaticā sanctionem, nullam sacram Annotationem, quæ generali Iuri, vel utilitati publicæ adversa esse videatur, in disceptationem cuiuslibet litigii patiuntur proferri: sed generales, sacras constitutiones modis omnibus non dubitemus obsecrandas. *Var. Rel. Ital. Constantinopol. So the Emperor Anastasius. Cod. lib. 1. tit. 22. lult.*

(2) General: whereof the Students to the Doctor, Dial. 1. cap. 7. as the third ground of the Law of England: or particularly, whereof cap. 10. 16. Bract lib. 1. Sect. 2.

(3) Whereof the Body given by Bracton, Fleta, &c. from times before.

(4) Vide Doct. & Stud. Dial. end. cap. 11.

(5) Cook Instit. 1 fol. 11. b.

(6) Cook ibid & Instit. 4. cap. 22. pag. 134. &c. of the Court of Admiralty proceeding according to the Civil Law.

(7) Atqui interea, è locis superiis ex Iure Cæsareo ab Iuriconsultis Nostratibus, Fleta utpote auctore, Bractonio, Thomæ celeberrimis ac Iudicis cum primariis (quantum ad posteriores binos attinet) Prefectis, ita allatis expressimque indicatis, atque in rerum quas tractarent probationem et argumenta sic adhibitis, idque velut auctoritatem aut saltem rationem cogentem præ se ferentibus, manifestum fit, Vsum qualemcunque neque cum adeò obicuro apud Majores nostros eo in sæculo juris ejusdem, atque illius librorum in discussionibus nostris etiam ex jure Anglicano definiendis invaluisse. *Not with intent to subvert this Kingdom to Caesar or his Laws, or relinquish our own, —* sed ut, tum ubi deesset nostri Iuris præscriptum expressius ad rationem etiam Iuris Cæsarei ratione iussuram recurreretur, tum ubi Ius utrumque consonum, etiam Cæsarei quasi firmaretur, explicaretive res verbis. *Seld. ad Flet differt. cap. 3. Seld. 4. pag. 472.*

(8) Cook on Littleton, Seld. 648 fol. 344. & of the Institution of Courts, cap. 74 p. 321. *Doct. & Student, Dial. 1. cap. 6 fol. 11. Artic. Cleri 9 Edw. 1. Circumpetere ag. is. 13. Edw. 1. Stat. of 24. Hen 8. 12. Dr Th. Smith de Repub. Anglican. lib. 3 cap. 12.*

to us Christians; and (1) this likewise, as that, a Rule of Laws. Also that law of Reason, spun out into certain, as it were derivative branches, which are so many sorts of that we call positive Law; as,

(2) Law Customary,

(3) Law Common.

(4) Law Statute.

(5) Law Maritime, or that of

Oleron, published by our *Rich. 1.* there, but of English mint, though there cast and named; the English Sea Law it is made at *Oleron*: The (6) Civil Law also, as in our Courts of Admiralty, and Marshalsey, and generally supplying (7) the defects, and eeking out the imperfections thereof by its larger spread body, extending thereby to many particular either determinations or reservations, helpfull where the brevity of our shorter Rules and Maxims of Prudence could not reach.

Lastly, the several pieces of allowed (8) Canon, fitly called the Kings Ecclesiastical Laws: which though ministred by Church-men, is, or was, one of the Kings arms of Justice, where-

by he reached out his helping power, and exercised some part of his Ecclesiastical Jurisdiction to some persons, and in those Cases it concerned him to have both ended, and thus ended, and accordingly was.

All these are so many Oracles of Justice, Pillars of Right, Distributioners

Distributioners of property, and Umpires of strife, authorized sufficiently so to do, and to give me any thing that they do give me, and what is so done or given is lawfully; and if any thing be so settled upon me it is questionless (1) mine. And as by these, so generally by writing, or custome, by statute, or canon, whatsoever in the true judgment of Courts, and common reception of those that are not mistaken, is Law; That is the same pillar of property, assertour of Rights, foundation of dominion, strength of title, and giver, maintainer, preserver, defender, assurer, and protector of a man in that he so has: as an oracle it tels him truly what is his, as more then a Prince he gives it him, and makes it wrong, injury, fraud, theft, usurpation, injustice, (and these things only possible this way) if it be taken away from him.

And for this purpose all these are equally and alike sufficiently operative. There is no choice; for where all are the same, and have the like cause of power, one must needs be as good as another.

All our law is in some sort, (derivatively, mediately, at second hand) the voice of God approving all just pactions, and humane positive lawes, and so his stamp is upon every part; and he that resisteth, in any, resisteth the Ordinance of God. Neither have we any other: These are the alone limitations, banks, and boundaries, that hedge in, and hedge out, giving certain admeasurement, as the law-word is in some case, of properties, to so very many as there be among us, making us know our home, and giving our home, which none but they can do in this various world. For the Divine Law immediatly is of no force; the severing by Tribes, or cutting by *Jeshnah's* thread served but once, unless for example, (and so I beleieve much use hath been made of it here, more then we are aware of or do readily understand, our (2) Shires, Hundreds, Tithings, &c.

nominate: Centuriam hundredæ: & Decuriam deopung, five tienman tale, id est, Decemvirale Collegiū appellavit, atq; eisdem nominibus vel hodie vocitantur. Hence our Tythingmen, &c. And a little after: Decrevit tum porro Aluredus libere ut conditionis quique in Centuriam ascriberetur aliquam, utq; in Decemvirale aliquod conjiceretur Collegium: De minoribus neque his Decurias ut judicaret, ac si qua res esset difficilior, ad Centuriam deferrent: (like the steps of Appeal, Exod. 18. 21. Deut. 1. 6 17.) Difficillimas deniq; & maximi momenti lites Senator & præpositus in frequenti illo ex omni Sarrapia conventu componeret. Gloss. ad La. bard. Archaion. pag. 217. in vocab. Centuria. As proved by Dr. Conell in his Interpret. in vocab. Hundred. And compare further Joseph Antiq. l. 3. c. 3. and 2 Chron. 25. 3. Some glimpse herof appeared to the publisher of Sir H. Spelman's late larger work of Tythes. pag. 41.

(1) And of such a Law of Man: that is consonant to the Law of God, is appeareth who hath Right to lands and goods, and who not: for whatsoever a man hath by self and of man, he hath righteously; And whatsoever he had against such laws, is unrighteously had. Dr. & Stud. Dial. eod. cap. 4. fol. 8.

In every Law operative will made us something of the Law of Reason, and of the Law of God. Id. fol. 7.

(2) Aluredus Rex (who as all grants made are political divisions) ubi cum Guthruno Daco foedus inierat, prudentissimum illud olim a Scythone Moyse datū secutus consiliū, Angliam primus in Sarrapias, Centurias, & Decurias partitus est. Sarrapiam Scýpe, à Scýcyan, quod patrici significat,

(1) As in the Ottoman Empire where the Timars are much the same with our military Benefices, obliging estates for life, upon death the State disposes, as of our Ecclesiastical Benefices; that falling not by inheritance, there may be still choice of fitting men, vide *Knox Turk. Hist.* in his Appendix of the Turkish Kingdom fol. Aaaaa: and that learned and judicious observer, Sir Henry Blount has also the same, who was lately among them, p. 65, 66 and before them Mr Selden in his *Titles of Honor*, par. 2. c. 12. So 'tis also in the Great Mogols State lately created and supported by them: vide *Peregrin Pilgrim* l. 5. *Append.* ad c. 6. p. 543, 544, 545. *Eds.* 1614. And Scanderbeg used the same policy also in Epirus. Now all this might have been well enough here, for the same thing hath continued, and is yet well enough in the Ecclesiastical State, nor wrong thought by the ruling Constitution, if when the man dyes, the widow and children are presently strangers: Nay, even in some nearer parts of Christendom as to secular succession too: for the Glosses on the Feudall Law, speaking of the old way for life onely: *Es hoc ad hunc obtinet secundum rigorem consuetudinis in se de Marchis, Ducatus, Comitatus, vel alterius regali dignitatu ab Imperatore date, quoniam illud feudum finitur cum persona accipientis, quia heres in eo non succedit, nisi ab Imperatore investitur*, Gloss. ad *testat.* ad feud. l. 1. tit. 1. *test. 1.* And 'tis true, it is so in the Text. De Marchia vel Ducatu, vel Comitatu, vel alia regali dignitate si quis investitus fuerit per beneficium ab Imperatore, ille tantum debet habere, heres enim non succedit illo modo, nisi ab Imperatore per investituram adquisierit: *lib. and. tit. 14.* Though perhaps it be not strictly executed: But this, it seems, the Law.

Coming I verily beleave at first from the patern of *Judah, Levi, Simeon and Benjamin*, by exemplification:) If any man should attempt it, he might be partial; if none, the thing not done: so that supposing a partition needful, and some to doe it, and no revelation from heaven, (save in patern or general rules,) we can lay hold of no other umpire or Judge like to be fit to do it, then that voice of wisdom (implying all mens consents) which is in the Law; the gracious goodness of God assisting the grave wisdom of man, yea, inabling and authorising it to set bounds hereby to our appetites, & master our unreasonable, proud, headstrong desires; giving lust a law, covetousness a law, the hand a law, nay, the eye a law, that it may not so much hereafter as greedily covet what is anothers. This is that which bindes the Bear and shackles the wolf, lays fetters upon our wilde and Forrest desires, that else would make us very apt to hearken to temptation to be preying one upon another. But this restraines our fury, and locks up the Lion in the grate, bidding, yea forcing all to goe home and be content with their own; *Sorte tua contentus abi*, and cast not a fruitless, sinful, greedy glance upon the inclosure of thy neighbour.

To give instance in some particulars: From this law thus received amongst us it is, that I am to succeed in my fathers fee: I have right to succeed, I may claim my right; and I have wrong if I be kept out of my due & lawful inheritance. For our Law hath divided much land into such tenures, (upon reasons of profound wisdom not discernable to every comon apprehension,) that hath willed I should succeed my father, if his heir; I am his heir, nay, though a daughter, and therefore I must and ought to succeed.

It is not so in (1) other States, nor was it in ours if it be

right feodal, where the fee was either for (2) life, so long as the known Miles lived, or for his son after him, (excluding his daughter,) though since the daughter was admitted because she might marry a Souldier, and so both she and the son new admitted: It was not so (and the law just while it was) but a military Benifice, as to succession, as an Ecclesiastical.

(2) Or not so long, but *domine se gesserit* at first, as an ecclesiastical man keeps his Bene-

fice, or as Tenants at the will of the Lord, to be eured upon distaste, as a stipendary servant from his ten pounds a year. For the Fee was nothing but so much land given for observance: To suppress outrage, maintain the Lords title, and help keep the rest in awe. Take the best authority, *Antiquissimo enim tempore sic erat in dominorum potestate communi, ut quando vellent, possent auferre rem in feudum a se datam*, (retained to this day in Castleward, saith the Gloss, as a General discharge a Captain at pleasure) *postea vero ad ventum est, ut per annuam tantum servitutem haberent: deinde statutum est ut usque ad vitam Fideles produceret: r.* (so an involved condition of Loyalty.) *sed cum hoc iure successimus ad filios non per totum, sic progressum est, ut ad filios deveniret: in quem* (c. dominus hoc velle benificium confirmare; (so now to a man and his son, no more;) *sed hodie ita stabilitum est ut ad omnes et natus filios pertineat: (not, as in Gavelkinde, divisible, which was ununsual in Fees: as Sir Henry Spelman in Gloss. p. 257 but to one and all successively, (or so many lives he had, the father and all his sons, that All might succeed in All:) for before onely one was taken in, ad quem, &c.)* Afterward (about the year 1035) the favour was enlarged: *1. Cum vero Conradus Romanus presbiteratus, petiitum est a fidelibus, quibus cum erat servitio, ut lege ob eo promulgata hoc etiam ad nepotes ex filio produceret dignaretur: (Now Grand children taken in; understand immediately to succeed their Grandfather, their Father dead:)* *2. Et si frater fratris sine legitimo herede defuncto, vel filius in beneficio quod avunculi patris fuit succedat: (now to his father immediately, to here in a second succession a third possession secured, to a man, his son, and that sons Brother; or to a man, his son, and that sonnes son: But this held not unless the first Donee were in the line ascendat:)* *3. Sin autem unus ex fratribus à domino feudum acceperit, et defuncto sine legitimo herede, frater ejus in feudum non succet it; and so goes on to regulate and limit other ren ocer, or collateral successions, ending at last in, In masculis descendibus hodie novo jure usque in infinitum extenditur.* Gerardus Niger. Feud. lib. 1. tit. 1. By these degrees things crept up. *Sr. Tho. Ridley* acknowledgeth two sorts of Feuds, Temporall, and Perpetuall: View of the Laws, par. 1. chap 4. sect. 2.

(3) For the Lombards, from whom the Feuds first came, or at the least were chiefly derived from them, directing all their policy, as the Lacedaemonians did, to matters of warre, had no feminine Feuds, among them; But after by process of time, there were created as well feminine Feuds, as masculine, &c. So goes on Sir Thomas Ridley in the same Section. And the reason is given more explicity by P. Rob. ff. *Quoniam femina non potest ita bene defendere dominum in Bello, vel alias servare fides viri: ergo nec feudum habebit, cum deest ab servitio: r.* (though by custome it be in France otherwise;) Feud. Deel. p. 1. Septimo.

The bottom of all is that of the Ruling Law: *Hoc autem notandum est, quod licet filiz ut Masculi paribus feudum, legibus tamen à successione feudi remouentur: similiter & earum filii, nisi specialiter didum fuerit ut eas pertineat,* Gerardus Niger. lib. 1. tit. 1. eisdem, sect. 3.

And so 'twas in the Salike law: wherein *inter ceteros spectatissimus est iste paragraphus: In terram Salicam Mulieres ne succedant: or as others more fully; de terra vero Salica nulla portio hereditatis mulieri veniat: sed ad virilem sexum tota terra hereditas pertinet: r.* *opud D. Spelman. Glossa p. 442. in vocab. Lex Salica.* The meaning whereof has been expostulated at the cost of Armies of men, and Millions of treasure between us and FRANCE: a few lines are not fit to interpose for umpirage, after so many and horrible contestations.

(1) *Lex quidem Angliz est, ut si quis uxorem hereditatem habentem duxerit, vel aliam terram habuerit in feodo ratione maritagii vel alia causa donationis, quod feodum habeat & liberum tene- mentum, si liberos inter se ha- buerint ex iustis nuptiis procreatos; si ipsa præmoriatur, remanebit viro terra mulieris tota vita ipsius viri, siue superstitis fuerint liberi siue mortui, dum tamen sonum emisserint aut clamorem, qui audiat inter quatuor parietes, si hoc probetur.* *Flet. lib. 6. cap. ult. sect. 4. But this is only of the first Husband.*

Vid. Bracton de Except. cap. 30. sect. 7.

Littleton. lib. 1. cap. 4. sect. 35.

Dr. & Stud. Dial. 1. cap. 7. fol. 14.

(2) *Et est appel tenant per le Curtesie d'Engleterre, par ceo que ceo est use en nul autre Realme forsque tant seulement en Engleterre.* *Littleton. lib. 1. cap. 4. sect. 35.*

(3) *Dr. & Stud. Dial. 1. cap. 10. fol. 21.*

(4) *Rationabilis autem Dos est cuiuslibet mulie- ris de quocunque tenemento tertia pars omnium terrarum & tene- mentorum, que vir suus tenuit in dominio suo, & ita in feodo quod eam inde dotare poterat die quo eam desponsavit.* *Bracton. lib. 2. cap. 39. sect. 2.*

fol. 92.

Vid. Flet. lib. 5.

cap. 23. sect. 11. pag. 341.

Mag. Chart. c. 7. &

(5) *Dr. & Stud. Dial. 1. cap. 10. fol. 21.*

(6) *Romanis non in usu fuit uxoribus dotes retribuere: ideo verbo genuino carent quo hoc dignoscitur: & rem ipsam in Germanorum moribus miratur Tacitus, &c.* *Spel. Gloss in vocab. Donarium p. 216. col. 1.*

(7) *Nat. Brev. fol. 6. Bract. de actione dotu, c. 1. sect. 2.*

Glauvill. lib. 6. cap. 5.

Glauvill. lib. 6. cap. 1. & cap. 17. Chart. R. Ioan. apud Mass. Paris.

Littleton. lib. 1. cap. 5.

ad am. 1215. pag. 247.

Littleton. lib. 1. sect. 37.

Flet. lib. 5. cap. 25.

Escheates also, and straves, Fines, and Herriots (against which some keep now a grumbling that are worthy onely their own low thoughts, as if all were too deep their shallow capacities cannot reach, and justice folly be cause fools understand not wisdom) the Landlords relieve, the Church-mans mortuary, a quitrent, a days work, Eschuage, (1) foldage, (2) Chevage, (3) Chiminage, I doubt not all these are as due to those can claim then by law, as money lent, the publike tribute, the landlors half year, or any thing is out of ones own possession; though whether other states have the like I know not, or what is equivalent to them, we are to walk by our own rules not by theirs, and that which here with us gives right, is enough though in other places it do not. We may say as well as the Empire, why not? having equal power within our selves to chuse our own rules, (changing but a few necessary names:) *Ius Quiritum est propriè Romanorum, quod nulli tenent nisi Quirites id est Romani. In quo agitur de legitimis hereditatibus, de cretionibus, de tutelis, de usucapionibus, quæ jura apud nullum alium populum reperiuntur, sed propria sunt Romanorum, et in eisdem solos constituta.* Dist. 1. cap. 12.

(1) Faldagium est privilegium erigendi & circumagendi faldæ seu ovilis per certam camorum extensionem eorum stercoreandi gratia, & gregis fovendi. *Spelman Gloss. in voc. Faldæ p. 248. It seems a privilege the Lord had to pen upon his land all the sheep fed in his manner.*

(2) A kind of tribute paid to the Lord as head or chief, in token of acknowledgment of his.

Chevagium dicitur recognitio in

signum subjectionis & domini de capite suo: Et quamdiu Chevagium solverint servi, dicantur esse sub potestate dominorum, nec solvitur dominica potestas. *Bract. lib. 1. cap. 10. sect. 3.*

Fugitivi esse incipiunt nisi Chevagium annum Domino suo solverint in signum servitutis. *Flet. lib. 1. cap. 7. Sect. 7.*

(3) A tribute that Woodmongers and others, paid to the Fee-farmers of the forest toward the wages. They were called Chemini, from the french word Chemin. for a way. Volumus & statuimus etiam quod decima de fanis ubicunque crescant, five in magnis pratis five in parvis, five in Cheminis exigantur. *Lyndwood Constit. Provinc. cap. 1. Quoniam propter. Et, pax quatuor Chiminorum: — & Chimini minores de Civitate in Civitatem, leg. Edwards Confess. cap. 12. It was four pence a year for a Cart, and a penny for a horse: due and so limited by Chart. Forest. cap. 14. in Pultons abridg. pa. 8. & vid. Math. Paris. Hist. in Charta. R. Iohan. p. 250.*

I might farther instance in some other, (proper rules of right for our clime) but I fear the porch too big, (which yet if it be, may serve for other uses then to be onely here an introduction;) wherefore but to point.

Abroad

(1) De divisione rerum. l. riparum. Instit. 2. tit. 1. sect. 4.

Bracton lib. 1. ca. 11. f. 6. 6.

(2) Sed publica hæc q. 2. totius populi al. quando fuerunt, jure nostro ad regem erant. feruntur:

quippe qui universi populi atq; adeo ipsius Reipublice personam sustinet. Quicunque in ripa: fluminum publicorum naves hodie exonerant, vectigal Regi, aut jus ejus habentibus solvunt. Et in flumine publico nemo piscatur, qui à Rege hanc libertatem non obtinuit. *Cowell. Instit. Jur. Anglie. lib. 2. tit. 1. sect. 4. vide Bracton lib. 2. cap. 1. sect. 2.*

(3) Instit. 2. tit. 1. sect. 47.

(4) Cowell ib. sect. 7. Bracton de Corona cap. 3. sect. 4. fol. 120. Fleta lib. 1. c. 43. sect. 2. p. 61.

(5) Acquiritur dominium per inventionem, ut si thesaurus invenitur, *Bracton lib. 2. cap. 3. sect. 1. hoc to whom?* Cum in nullius bonis sit & antiquitus inventoris, nunc de jure gentium efficitur Domini Regni. Id. de Coron. cap. 3. sect. 4. fol. 120. Fleta, ubi supra.

(1) Quod enim nullius est id ratione naturali occupanti conceditur. *F. de acquir. rerum dom. l. 3.*

(2) Bracton lib. 2. cap. 8. sect. 2. & cap. 24. sect. 1. Fleta lib. 3. cap. 2. sect. 1. Cowell Institut.

loco citat. sect. 12. De feris, piscibus, avibus illud notandum est: Qui imperium habet in terras & aquas ejus lege impediri posse aliquos, ne feras, pilces, aves capere, & capiendo acquirere eis liceat: atque hac lege etiam teneri externos. Ratio est, &c. Nec obstat quod sæpe in jure Romano legimus, jure naturæ aut gentium liberum esse talia animalia venari: hoc enim verum est quamdiu nulla lex civilis intercedit; sicut lex Romana res multas relinquebat in illo primo statu, de quibus alia gentes aliud constituerunt. Cum autem lex civilis aliud constituit, eam observari debere jus ipsum naturæ dicat: *Græc. de jur. Bell. 2. 2. sect. 3.*

Abroad the use of havens, banks, rivers, &c. is publique and unrestrained, but with us (2) the Kings, (whence he requires new impost.)

Things (3) lost and found the finders, but our sea-wracks (4) the Kings.

Treasure trove, (5) the gift of fortune, meant for the finder, but with us the Kings.

That was no ones, the (1) Takers, (as fish, fowl, wilde beasts, &c.) but with us again (2) the Kings; and so generally we are ruled by our selves: Our own law is the measure of our own right; we have that, and that alone, but that firm, and it is injury, and that injury alone to dispossess us of, that our own nationall, home-binding Laws have settled as they have; That, is Here nothing else, right or wrong.

Some seem to go farther, in requiring to property in the Common-wealth a right in Religion; to have a right in Christ or none in the Creature, for whose sakes is that question cut out: *An dominium temporale fundetur in gratia?* or as others, *An gratia sit fundamentum domini temporalis?* but (besides that, the discussion hereof moves properly in another sphere,) I believe if they be understood aright, their desires may not be altogether irregular: for of that Civill Right we speak of, they require and seem to have enough in

civill

Civill determinations. To purifie so the conscience in the sight of God, they may say perhaps we must have more; our nature amended, by Christ sanctified, and by application of him himself owned, and so only to the Pure are all things Thus pure: But to peace and order and right among men, here the determinations of the lower scene are enough; and he breaks humane laws that couzens or steals what is but so settled by them; and by consequent Gods, because Mans.

It were hard to say, that, as on the one side a sanctified man should finde no more sweet in Gods blessings of the same kinde then a heathen or a publican; so on the other, that any should be so vain to think that a wicked man is thereby an out-law, having no faster seat in his possessions, then that a godly neighbor may turn him out of doors to morrow, and by vertue of his share in Christ (the heir of all things) create himself a principality in present of all the wicked mens wealth in the world. The Indian is sure master of his own gold and spices; the King of Spain of his Indies; and a Jew or Turk of their severall Owns; nor can the most debaist Russian amongst us (worfe in some regard then *Turk*, *Spaniard*, or *Indian*) but be so true and rightfull a Master of his own wealth, that his most hellish wickedness cannot turn him out of it in this world, (unless his prodigality do) that he should be henceforth a thief of his own wine or cates, or so meer an usurper that any of Gods servants may usurp from him indeed, and rob him as the Israelites did the Egyptians in equity and conscience. Far be this from every one has truly learned Christ so to think or do. 'Tis fit every swine have his own sty, every dog be let alone in own kennell: The grace of Christ teaches us to use our own, not censure others; to be thankfull for what we have, not covet what is other mens. There were that it hath been laid to their charge they have endeavoured to subvert those laws, to bring in the Civill, and do some such things as *Stephen* was accused to say *Jesus of Nazareth meant, To change the Ordinances that Moses gave them*, *Acts* 6. 14. & *vid.* *Cap.* 21. 21. So these, what *K. Alured*, *St Edward*, *King Edward*, *Henry*, *Elizabeth*,
H *James*,

James, and other Law-founders have with much bounty and wisdom distributed out unto us: But if, this would have been such a transcendent attempt both of folly and tyranny that it would have whered in more injury then ever the Conqueror could, who changed the Governor, but could not the Laws, kept and was forced to keep that body intire, only he set himself a new head at top, and would have rendered them questionless guilty of that *Crimen lese Majestatis*, the highest offence, whereof *Glaucvill* speaks in the very beginning of his Book, *De nece vel seditione domini Regis vel Regine*, leaving little else for a foreign Enemy to do, tith the taking off these would consequentially have taken away all things. For pretend they to amend hereby what they would, bring in the twelve Tables, the politicall part of the wise *Alexander*, the Partidaes of *Spain*, Arrests of *France*, or whole voluminous bulk of *Justinian* and *Accursius*, there could have followed nothing else with us but unsetledness of mens estates, (which are the gift of our Law alone, and by that alone guarded and preserved) disorder, ignorance, multiplicity, uncertainty, and to those that had any thing the worst undoing even by law, and that this should settle them besides their own, all they are now owners of: For new instruments must have a new work, a new-fashioned rule draw a new-formed line, a new Law have a new Righteousness and so our Fees, Socages, Burgages, Claims, Entries, &c. would all have been put out of their old course, into another that new, and perhaps not consistent with our Government, perhaps, not with our selves; and in a word, a New right, and what were then become of the old, and All, as many as had any thing by it? Some would have stuck to this; others to that; another parcell to neither; a fourth (only to the right) that we had and is best because fittest, and used, loath to stay in *Babylon* when they saw hopes of *Sion*, while in the mean time all vary, and *Sion* is made no better then *Babylon*. No whole part can tell whither to take, and unity being gone, thereby a new sad way paved in division, to war, poverty, ruine, desolation, and by Anarchy extreme disorder and very confusion. Let them bear their rebuke whosoever they be

that

that should have attempted things so monstrously exorbitant, and full of sin as well as injustice; All 'tis like would have been hereby at stake, if not All lost: for our Law gives and preserves us All, and the taking away this, or changing, must needs then have taken away or indangered All: According to what a Lord Chief Justice said not long since, The Law is the most common birth-right that the Subject hath for the safeguard and defence not only of Goods, Lands, and Revenue, but of Wife and Children, body, fame, and life, *Cook Instit.* 1. and *Bracton* before, *Iustitia dat unicuique quod suum est*, lib. 1. cap. 4. All is the bequest of Justice, and the parent and guide thereof is the Law.

And thus my Porch or preparatory Preface seems well nigh finished, raised upon six Pillars, as I take it, of firmnesse enough, touching the nature, ground, rise, growth, strength, and perfection of ours and all Civill Rights. There may have been some mistake in tempering the mortar, disordering the materials, or blemishing the whole by unskilfull handling, but the truths howsoever seem solid, and their use enough, chiefly in this, relating (for which they were given) to all follows, That, if this be the nature of Civill Right, and All mens best, and tythes have This, in any ones disturbing them, he must needs disturb what hath the common foundation, in with-holding them he with-holds what is due by as good Right, as any man claimes any thing by, he undermines that which is the stay and support of his own house or wealth, and does what if the like should be done to him, would leave him Nothing, because He destroys that preserves and gives to him and All others Every thing. If we all rest upon one strength, and this be it, imbarque in one bottom, stand upon one leg, and settle upon one and the same bough, let any Englishman take heed how he meddle with this common support, lest he infirm his own, and not be too venturous of the strokes of his Axe, for fear of danger to himself, by cutting the bough himself in his greatnesse, stands upon. He may think to pare about craftily, and with such prudent caution and an eye to himself, weaken the whole, that there be

strength enough left to support his Own Right : But this is neither safe nor honest : Not safe to tamper with a common foundation, to sprinkle fire in the next thatch, that may catch home ; to bore a hole at the other end of the vessel where a neighbours wealth lyes, thinking his own safe. Not honest, to designe any other mens equally Just and Due rights to be fed and preyed upon, to increase ones own heap, by taking (or with-holding) from anothers, or to wish the next house pulled down, and the inhabitants turned to the Common, that one may take as much as he needs of the spoil to multiply or strengthen the Studds of ones own building.

That which is just and Right shalt thou do, is the rule of the holy Law, This is neither : That thy Brother may live as well as Thou, a mercifull and conscionable rule in Israel. This takes away Brother *Levi's* life, and leaves him a Beggar with others plenty. A Beggar is not uncapable of bounty, nor unfurnished with a hand to take what another shall arbitrarily give : But we are not so unacquainted with the holy Law of God, as not to know what heavy censures are there registred against those whose oppression, covetousnesse, and with-holding what is due shall make beggars. Now *Levi* an owner, as well as *Judah*, and by the same right as *Simon* or *Benjamin*. The same equal universal all-giving, all-preserving Rule of Right, the Sacred common law gives Him his and others Theirs : 'Tis the pillar of the temple upon mount *Moriah*, as well as the palace upon mount *Sion*, stablishes the Church-house, as well as the farm or Cottage, and giving every one his own, gives the Tenth part out of the Nine as well as the Nine whereout was taken the tenth. *Quæ restat demonstrandum* : But first it may not be unprofitable to recapitulare, and shew how one and the same thing may drive it self through all the fore-going considerations. Take for instance a piece of gold, or Any thing, and see how those truths take place, or in this manner have their several operations, Thus.

I. In absolute consideration it is no ones : no more property of it by God or nature, then of the moon and stars : 'Tis mine, thine, his, every ones, no ones.

II. Ye

II, Yet it may be owned, or else much of the good of it would be lost, and the Courteous intents even of smiling fortune rejected by a fullen neglect of her proffered cheap favors. But,

III. Who shall make this division? I may not, nor another, nor another, nor any Man; Therefore 'tis fit, the Law.

IV. Which varying, yet all have agreed in some things, and that wherein they all agree is the best rule of partition and possession in the world.

V. But if severall States have fancies and wayes by themselves, not finding what is commonly good to be best for them, they May, and their severall Owns be, what they by their select rules shall have chosen.

VI. And particularly in *England*, that under severall forms we have agreed to make severall parts of our one Rule, the English Law. So that then the gold above was

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I. That is certainly no ones by God or Nature; for shew me the text or clear reason that says 'tis, whose?

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Do not all mankind know, that severall men may have severall rights and interests in the self. same house and

land, and yet neither destroy the other? Is not the interest of the Lord paramount consistent with that of the Mesne, and his with that of the Tenant; and yet their properties and interest not at all confounded? King *Charles* his answer to the Remonstrance touching HVLL. 26. *Mass*, 1642. pag 5.

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III. Who hath inclosed? who might? Surely, no Man. Therefore the Law.

IV. According to what *Effata*, or oracular determinations thereof? In the world by the rules of the world: 'Tis his who hath most need, who first entred, who does possess, &c.

V. In a region who hath bought, inherited, succeeded, obtained, by descent, donation, exchange, purchase, &c. according to the forms of that Region.

VI. In Our nation, who by the just, pertinent, and impartiall sentence and application of those all-giving forms with us it is serled upon, which also admits of some further variation: For,

1. By unquestioned maxime the whole originally was the Kings. He was *Directus Dominus totius*, though the *Dominium Utile* might be transferred to others. No Alodyes left amongst us: Independency (of all and absolute) a Monster. All the beams that shine below in the lower world come first from the sun, and what is in private stock from the publick store.
2. Yet all is not his now *pleno jure*, in full possession, and round about every ways: for he hath parted with Fees, Fee farms, Serjeanties, Socages, &c. to intrusted Lords.
3. His honours have Mannors, as Chips of the great block, whereof the Masters think they are to have some subordinate right.
4. And those Mannors also their sub-subordinate dependencies of free and copy-holders.
5. Either of which may have also their under-tenants for term of years, life, will, &c.
6. And these also let out the fruit to one degree lower, him that dwels in the house, manures the land, and immediatly, actually uses and possesses what so many others have their distinct superior rights and titles in.

Thus

Thus we see what may be by *supra* and substitution, how many considerations the same thing may passe through (each of which gives a new face,) before it settle any where: and how many things we must have consideration of, before we can distinctly know what is whose, and what Right, and no more, any one hath in any thing. Of all which the Basis is still the Law, wherein what footing, or rather rooting TYTHES have, is our work chiefly intended, and now next to be set about.



CHAP.





C H A P. V I I.



Hat right then have Tythes? I answer briefly, Manifold. It often comes to passe it is so, and that one and the same thing hath many firm bottoms to settle on: Two feet for the more strength, two strings to the same bow though one be enough, and four better then two; for a surplussage of strength does no way tend to weak-

ness, nor an accumulation of titles mutually weaken or destroy: Now at least three distinct Rights, and each strong enough are here:

I. Of Donation.

II. Possession.

III. Prescription.

Tythes were

1. Given.
2. Are possessed.
3. May be prescribed for.

Nothing they say is more free then gift; 'tis naturall, that what I have is mine own; 'tis strong if a long time I have had it, and All these conspire and meet to settle Tythes where they are. 1. One limb of every body of the Law is, *de Donationibus*, and after many rules and cautions, the result is an undoubted Right thereby. 2. What I have is mine own, it is so, I know it, and till the contrary be evinced, the world will judge on my behalf. 3. Continuance of possession (just or unjust) shall create a Right. He that once had title to the house I dwell in, let him come after a hundred year possession (in my self and ancestors) I dare now joyn issue with him,

*Item acquiritur
nobis dominium
jure civilis
causa donationis.
Fleta lib. 3 cap. 2.
sect. 17.
Dracton. 2. 4. 1.
Cowell Insur.
lib. 2. tit. 7. sect. 1.
Hen. 8.*

him, it is Mine and not His, because I have Kept it. These things are known enough, and I aver they all meet here, that Tythes Were given, Are possessed, and Long enough to create prescription; A threefold cord is not easily broken, and here is that complication of 1. Donation sufficient. 2. Possession undoubted. 3. And Prescription for time over and over. To which adde, that each of these pillars hath also another strong stay by, to support the weight laid on it: Donation is bettered by Confirmation: Possession secured by him in whose right the possession is; *Dedimus Deo* was the form of grant, and is the ground of claim: Prescription is lengthened through more then half twenty times over so much as would simply serve the turn: And if these things be so, and they are, and all, and known, by the Law, be this supposed, and me thinks we may sing *victoria* almost already.

But they remain to be proved; by Gods blessing they shall: There is neither of them but lies clear in view to those are acquainted in those regions of knowledge (whether of Books or Experience) where a likely information of any of them is to be looked for; and I shall yet add one thing more as a Coronis at top, the opinion of the Learned in their own profession. One single self may have been deceived not inexcusably; 'Tis hard for a stander by to be acquainted in all the rooms of a neighbors house; some sparks of true light have sometimes (by their not right use) but led private men to Errour; But as witnesses produced go for proof usually, and their agreement strengthens their testimony, and a conspiracy of them professing to know, is the fairest of all presumption against mistake.

If therefore the Lawyers themselves have apprehended thus with me, if they have combined and conjoynd to say so, if there have bin that combination and consent that they All have said so, and till within these few years no One would have been Fee'd to the contrary; nor, if he understands himself, will yet: from All these I shall not doubt to infer a strength of presumption, that what men have said, the learned have said, the Lawyers have said, and All of them both have and doe, (no one to be hired to the contrary, whereas

I

they

they come in *gratis* on the other part,) hath much more then likelihood that it may be true which they aver, and for their assertion sake. From whence may we expect Credibility, if not from the voice of men, of All men, and they agreeing, and the Seers themselves giving their vote? *In omnium vel trium stabit omne verbum*, says the Divine Law, 2 Cor. 13. 1. Num. 35. 30. Dent. 17. 6. cap. 19. 15. Mat. 18. 16. John 8. 17. Heb. 10. 28. How much more, *In assensu & consensu omnium & singulorum*? That is a bad case which admits no plea, that no one will be hired to undertake, or colour for, that neither hath substance nor shew. If therefore the grave and learned Judges (the Oracles of the Law) have gone this way, if the other reverend Sages (I comprehend all graduated professors) take in along with them, if it be the painfull knowledg of the Student, the costly knowledg of the Country-man, the experienced knowledg of most men, the generall allowance of All men; Doubtless there must be so which one says, and another says, and a third says, and a fourth says, and every body says is so; and most likely when the professing too, know, joyn in, and say so likewise.

We have made room enough, a large field to expatiate in. God be our guide, as Truth our aim, and success but as the righteousness of our Cause shall deserve for us: The first part of the plea was Donation: Which, because it is like to be large, the fast Corner Stone whereupon to settle the chiefest of what follows, something would be said what it is, what may give, what, to whom, &c. It may not be safe to go on at our own heads. Here therefore again for the help of the Sages,

Donation then (says (1) *Bracton*) is a certain Institution that proceeds from mee's bounty and will, no law forcing, to transferr a thing to another. Or, To give, (says (2) *Fleta*)

(1) Est autem Donatio quædam institutio quæ ex mera liberalitate, & voluntate, nullo jure cogente, procedit, ut rem transferat ad alium. *De acquir. rerum don. cap. 3. fol. 11.*

(2) Dare autem est rem accipientis facere cum effectum. *Fleta lib. 3. cap. 3. fol. 1.*

is to make any thing his that receives it. But (3) *Cuiusmodi* lately thinks he hath hit it better then both, making it Properly the free alienation of any thing, with this minde that it shall not revert to the Donor. The first of these may leave a rub in the way to hinder that we would by no means oppose in all this Tract, the free progress of that opinion, that Tythes are due *jure Divino*: As if they be, how can we say they were Given in the sense there, *ex mera liberalitate, nullo jure cogente*: Or if the (4) Divine law did inforce, then how are they in this sense clearly given? I answer, well enough; as well as a man may give that which God had said before he should give; or do that freely, which the scripture yet irreversibly commands he should do: Give an Alms to a poor man, says the Scripture: which man does of himself, (the rather for that command) freely, and yet the divine Law was in force, and obeyed, to part with that a man was not bound to part with.

Give the seventh part of thy time, says the fourth Commandment; yet 'twas a voluntary (1) Act of our State, that in obedience to that command, but freely in it self, set aside this part here with us; They might, or they might not, else

(1) Ecce proprie donatio alie iactio rei quæ liberalitate causa fit, hac mente ut nullo casu recipiatur. *Parisi. ad F de donationibus*

(4) Do vari viletur quod nullo jure cogente conceditur. *F. de diversif. reg. l. 82.*

(1) Quarto decimo statuitur loco, ut Dominicus de es legitima ver

neratione à cunctis celebretur. sitq; Divino tantum cultui dedicatur; — Omnisq; exterioribus negotiis, atque seculari non conventibus, atque itineribus: nisi inexcusabilis quælibet causa urgeat, religiose conversationis ac bene vivendi normulam de sacra scriptura eloquiis subiectis famulis predicando insinuat. Sed & hoc quoque decernitur quod eo die sive per alias festivitates majores, populus per Sacerdotes Dei ad ecclesiam sæpius invitatus, ad audiendum verbum Dei conveniat, missarumque sacramentis, ac doctrina sermonibus frequentius assistat. *Concl. Cleves. an Chr. 747. cap. 14. apud D. Scriman. concil. Briton. pag. 249* Die dominico nihil aliud agendum est, nisi Deo vacandum, in hymnis & psalmis & canticis spiritualibus. *Excerpt. Egbert. 104. circa an. Chr. 750. ib. pag. 268.* And for the forbearing of working, *transmissio*, *increasing*, *impleading*, &c. are other siller Laws: How the master should be punished, how the servants, &c. which by degrees brought off men from their accustomed common employments. *vid. L. Int. Regni 3. circa ann. 710. in Lambard. Archaion. pa. 1. & Spelm. Concil. p. 183. Concil. Bergamsted. ad ann. 697. can. 10. 11, 12 ib. pag. 191. Excerpt. Egbert. 16. pag. 262. Fœdus Edwardi & Guthrici regum. cap. 7 & 9. apud Lambard. Arch. pag. 41. agreeing with those under the title of 3. Leges Eccles. ab Alured & Guth. R. L. latæ cap. 10, 11. apud Spelm. pag. 37. L. Ecclesiast. Ethelstani R. circa an. 928. cap. 6. ib. pag. 400. Constit. Odonis circa ann. 943. cap. 2. ib. pag. 417. Leg. Eccles. Elgari R. ad an. 967. cap. 5. ib. pag. 445. & cap. 6. pag. 446. Canones dati sub Edgar. cap. 19. ib. pag. 40. Concil. Anham. circa ann. 1009. K. 30. L. Ecclesi. Canuti R. circa ann. 1032. cap. 14, 15. apud Lambard. pag. 103. L. Ecclesi. Canuti. cap. 14 & Capitulare investiti temporis & authoris: cap. 14 in Spelman. pag. 600.*

All which things and the reinforcement of so many, do show how hardly men were drawn off their own wayes: what need the Commandment of God hath of the abetting law of man that it may take place, and how clearly and fully that may be after given by man, which God appointed to be given: And now, 'tis here, what alone, which gave this day Sabbath day to God here with us.

they had not been free : but now, besides the fourth Command : it is secondly due to humane Justice (appointing it,) to have the Sabbath sanctified : So, Give the Lord the Tenth with a good eye, is interpreted to us the heavenly Oracle, yet when the believers came to obey, they did it freely, which they might not have done: *Nullo jure cogente*, that is, none of the same sort, none on the same floor, no humane lower positive law having set aside any thing, or commanded, though the higher Divine law had bound it to be more then expedient, which yet might not have been obeyed. The summe is, God may have said, the Tenth should be paid, Man have not obeyed ; but he did, and gave by the perswasive influence of Divine command, that which was his own, and he was bound by no humane Law before to have given : and so here is commanded, obeyed, and yet free and voluntary Donation.

But, to go on, Donation, which was as before, is divided into (1) free, absolute, illimited, and meerly voluntary, *sub modo*, under limitation or Condition, as, *Do ut des*, or *Do ut faciat*, &c. Now although this be in it self more avoidable, as letting out into more ways of evasion, yet the thing conditioned be of evident necessity, as, I give thee thou shouldst preserve this man from starving, to do such a thing necessary in publick, or for the service of God, which is most necessary, or the like ; Now in this case the necessity of performance mounts up with the needfulness of the thing depending, for it is more expedient that such necessary things in themselves should not be left undone, then any ones simple, declared, single will thrung in to take place, which yet in Justice ought, though in this necessity (comparatively) ought not.

(1) Donationum alia simplex & pura, sc. quæ nullo jure civili vel naturali cogente, nullo pretio, metu, vel vi interveniente, ex mera & gratuita liberalitate donantis, procedit: Item alia fit ob causam, ubi sc. causa interponitur, ut aliquid fiat vel non fiat, &c. Et hoc genus donationis improprie dicitur donatio. *Brass. lib. 2. cap. 5. sect. 3.*

(2) Dare autem non poterunt illi, qui generalem rerum suarum non habent administrationem, sicut sunt minores, incarcerati, furdi & muti, & naturaliter furiosi, &c. *Flou. lib. 3. cap. 3. sect. 10.*

Further, who may give ? and 'tis answered, All, that are under no prohibition : As, are (2) those that have no

power of themselves, as Pupils, who are like to make their condition (3) worse, (though they may contract to benefit, though not to loss;) and for this reason the Church also, (4) which is alwayes as a Minor: likewise the deaf and dumb, &c. nor the (5) person of a Church, because he is in possession, but in right of his Church, and so hath nothing to give, for what he hath was given *Deo & Ecclesie*, who are the proprietaries, he but the usu-fructuary, and so cannot dispose of anothers.

(3) *Vid. Brail. de acquiescend. verum dem. fol. 12.*

(4) *Vice autem minoris fungitur Ecclesia Dei: id. ib. & fo. 32. & Cook Indis. 1. fol 34. fol. 644. Agreeing with the like favour of the Civil law.*

(5) *Idem dicendum erit in rectoribus Ecclesiarum qui nihil possident nisi nomine Ecclesie suae, unde nihil dare possunt, alienare vel permutare, nisi de consensu episcopi vel patroni, nisi inde melioretur conditio Ecclesie: Si autem deterioretur non valet, quia sit eis donatio secundaria, sicut maxime patet in ipsa dedicatione, & etiam post dedicationem, Do Deo & Ecclesie tali, &c. Brailon. ubi supra.*

For, to whom; (1) To any one: Bond or free, Minor, or of full age, Jew or Christian, But not to a wife, not (2) to the Church in Mort-maine, except by license, (for every thing is to be kept within its due bounds; and a proportionable equality is like to be the Mother of longest duration: A monstrous growth tends to the sooner ruine, of it self or the whole; and therefore in its favour it is provided, the Church may not spread too big, lest *pondere pressa suo*, it fall with its own unweildiness.

(1) *Flor. lib. 3. c. 4. fol. 1. pag. 179. Brailon. ubi supra.*

(2) *Quibus dare inhibetur: Flor. lib. eod. cap. 5. & Magn. Chart. c. 36.*

Lastly, What may be given? what is Corporall or in visiblie, a possession or a right, a whole or a part, but not what is (3) no ones, as is every thing sacred: This is supposed out of every ones reach; 'tis no bodies (on earth) and so none can lay (4) hand of it to give it forth to another.

(3) *Nullius enim sunt res sacrae & religiosae & sanctae. Quod enim divini juris est, id nullius in bonis est. Inst. 2. de verum. disponsione. fol. 7. F. ib. 1. tit. 8. lib. 2. sect. sacra. Brailon.*

lib. 1. cap. 12. fol. 8. Extra patrimonium verò res sacrae & Communes: Flor. lib. 3. cap. 1. fol. 3.
(4) *Item donari non poterit res quae possideri non potest, sicut res sacra vel religiosa vel quasi qualescunque hinc: Brailon. fol. 14.*

CHAP.



CHAP. VIII.

*A little before the
year after Christ,
600.*



These things may seem needfull to have been pre-considered of gifts, to the intent what follows may not seem to have crossed the generall Doctrine. Among particular instances whereof to our purpose, begin first with the head, that which was to *Augustine*, or in that *Augustines* time whom some love to call the Apostle of the English men: who found most of this English part of the Isle as Barbarous, as the whole like to be when covetous men may save this expence. We censure not what the grace or power of God can do, but a likelyhood what he will. Miracles are not to be multiplied without cause, nor he to be put out of his ordinary course. By-causes; according to which we are likewise to expect and judge that will be, in humane probability is by them Like to be. He then found here the land dark as *Sodome*, the souls of men over-spread with Atheism and Idolatry, and no truth or knowledge of God, which he divulged successfully, and took care, (or the blessed Providence of God brought to pass) that the Vine and the Elm were planted and have grown comfortably together, Christian Religion and this acknowledged good support thereof being by one and the same Hand here planted and rooted; and as they were born, and have lived, if any be, God grant as Twins they be not taken away together also.

But whence does this appear? we should gladly have taken it up from *Bede* or *Malmsbury*, or any other creditable story, but we have it from what was more authentick, the most substantiall credit of a solemn law: By all mens leave, This shall

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shall be more creditable then any private Mans words; what is planted and shining in any publick past law, being less subject to forgery and subornation then any single simple mans Testimony whatsoever. In King Edward the Confessors Laws then thus we finde.

Of all (1) Corn the Tenth sheaf is due unto God, and so to be paid. And if any keep Mares, the Tenth Colt; but if he have but one or two, so many pence. So if any keep kine, the Tenth Calf; or if one or two, so many half pence. He that makes Cheefes, the Tenth; or if not, the Tenth days milk. In like manner, Lamb, Wooll, Sheep, Butter, Pigs, of all the Tenth. The tenth also of the commodity of Bees, and of Wood, Medow, Waters, Mills, Parks, Ponds, &c. the Tenth to him that gives both Nine and the Tenth. He that detaineth, let him be forced by publick Justice, (so I interpret that called there the Kings and the Bishops, because their powers were then represented together to confirm both ways, Civilly and Ecclesiastically:) for so preached and taught blessed *Augustine*, and so was granted by the King, the Lords, and the People.

Thus far that solemn Law, the authority of whose testimony we shall (2) hereafter more fully set forth, when, for the sake thereof, we shall shew the whole collection to be one of the ancientest pieces of the Common law, so often called for by the people, confirmed by the King, and entred into the Coronation Oath, &c. In the mean while, by all the credit this testimony can give, *Augustine* preached Tythes, the People believed, the King and Parliament granted; for what can be less meant by, *Concessa sunt à Rege, Baronibus, & Populo?* and under the specification of Colt, Lambs, Fleece, Corn, Milk, Honey, and most particulars claimed.

Let no man take advantage, by thinking me so unadvised as to suppose Parliaments so early under that name, which I know came in long after, and whatsoever should carry that title applyed in strictness to any thing beyond a good way in the Norman times, I should suspect it for Counterfeit: but that Publick meeting which had the power and vote of the Land, consisting of the Head and its subordinate Members,

call

(1) De omni anno 12, &c.
The Latin is after transcribed, p. 79.

(2) Vid. p. 90, 91, &c.

call it Senate, Gemote, Court, Councell, or whatsoever else the Collection and Congregation of the Land granted this.

Vid. Hist. Eccles.
lib. 1. cap. 26. m
fuo. & cap. 27.
Introy. 1.

Object. I know well what may be said to the contrary: as that Bede who lived soon after, and reports that story of Conversion at large, and is most authentick for those times and the following, sayes nothing of any such thing: not when he had just occasion so to doe: for he speaks both of Augustines entertainment (a few lands) and his sending back to Rome about Church-maintenance in general, and how it should be divided, but not a word of TYTHES.

Whereunto I answer, True this: but, what then?

Ansiv. 1. Negative testimonies are the weakest of proofs, upon the matter no proof at all; as silent witnesses that say nothing.

If Bede had said any thing we should have much listened, and that whether he had spoke against or for us; but saying nothing he is but a mute, and no more to be regarded strictly, then he that is called, comes in, and is silent.

2. As to his yet mentioning other things neer, the time of both was but when yet things were raw: when he had not preached, nor the people beleaved, or in reward settled what they may have afterwards. Time does much, nothing is begun and perfected at once; the story is plain, the questions sent to Rome, of which we have account, were, the first return of *Austines* success: and petition for supply of Council thence, and so might prevent what was after done, and it be too soon there to mention what was not till after, granted.

3. And the first of those questions was onely of oblations, as a part, and whereof might be the greatest doubt, not exclusive of other things.

4. Neither were those oblations all that was positively: for *Austine* had then other things, & so that expression not so full and comprehensive as to infer any thing from it as complete. For the King had given him (1) good entertainment at first,

1) Dedit ergo eis
mansione in
Civitate Doro-
vernenſi (qua
imperii sui co-
tinuerat Metropolis)

Et sic ut promiserat, cum administratione victus temporalis licentiam quoque predi-
candi non abstulit. cap. 25.

(no doubt continued) and (2) afterward, besitting his degree, as one to whom he had intrusted his soul, another place (3) I think his own palace in Canterbury, with needful accommodations of severall sorts. What those *Necessarie in diversis speciebus possessiones*, were, I know not: I beleieve they could not be comprehended within the oblations in the question mentioned, and so that not comprehensive of all was allowed.

(3) Donatusque à Rege archieps Cantuariensis in Episcopalem sedem, & aula Regia in Ecclesiâ Cathedrali Christo erigendū: sic ut æmulari Rex videretur quod ab Imperatore Constantino Magno factum perhibent. *Vita sancti August. apud D. Spelman. Concil. p. 91.*

5. 'Tis yet liker they were Tythes, *in specie*, for King *Alfred* seems to have borrowed such a law from this King. My reason is, because when after he composed a body, with a preface as from *Leviticus*, wherof one branch is for Tythes, he lays of the whole, that he thought it (4) too great presumption for him to attempt any such thing first anew, and therefore he modestly borrowed, with the advice of his Councell, from his Ancestors *Ina*, *Offa*, and this *Ethelbert*, *Qui primus Anglorum sacro tinctus est Baptismate*, the first of Christians. Now for *Ina* we are sure enough of him, by the laws extant, he had none such; if *Offa* had, then either this was that *Alfred* related to, or it was not. If it were, then has *Offa's* Law much confirmation in this of *Alfred*: If it were not, there could be no other to relate to, but this of *Ethelbert*.

literarum monumentis consignare, rum etiam incertum sit qualem apud posteros habitura sint fidem quæ nos imitari facimus, quæcunque in Actis Inæ gentilis Mei, Offæ Merciorum regis, vel Ethelberti, (qui primus Anglorum sacro tinctus est baptismo) observata digna deprehendi, ea collegi omnia, reliqua planè omisi: *Lamb. Arch. p. 12. Spelman. Concil. p. 363.*

6. Yet more likely, for that before Any other Act passed (this of *Offa* or any other, that we read of) here were tythes said to be paid: For (5) *Boniface* Archbishop of *Mentz*, blames the then Clergy here for neglecting their Cures, yet *Lac & lanam ovium Christi oblationibus cotidianis ac decimis fidelium accipiunt*. Now he lived about the year 745. and before *Offa*, or any other Act we read of but that of *Ethelbert*.

(2) Nec distulit quin ipse suis doctoribus locum sedis eorum gratum congruum, in Portovenia Metropoli sua donaret et simul & necessarias in diversis speciebus possessiones vel conterriti, *id. cap. 26.*

(4) Has ego Aluredus Rex sanctiones in unum Collegium, atque casilem lite is mandavi, quarum bonam certè partem majores nostri Regios coluerunt, multa etiam &c. Ac quoniam temeritatis videatur ex suis ipsius decretis quæquam plura

(5) In an Epistle to Cuthbert Archbishop of Canterbury, de corrigendis vitis Anglorum, about the year 745. *id. pag. 240.*

The Civill Right

This sure : we have here a plain affirmation , in a clear lay and so not rashly to be left for any private conjectures, or blinde presumptions, and that in such a place, that, save it *Domus-Dei* book, or a few other, we might not look for more authentick from the tendryes of that age. Some credit uses to be given to places; we least suspect forgery in a Church-window, or Palace-Inscription; and an historical truth shall never shine with that evidence, light and credibility to my soul from *Tacitus* or *Tranquillus*, if casually let fall or ingraven in the face of a Roman-law, or publickly inscribed in the commanding *Pandecks* or *Novells*. Especially sith, here was said to be a consent of King and people: which last if they had not consented, here would have been worke enough: every simple man would have been a single accuser, & every neighbour at hand a ready witness: Kings Accusers may have many eyes upon them; but to father any thing upon the people undone or untrue, were to create a Commonalty of enemies at once, every one with his accusation ready: clamor loud enough against the forgery.

We will say then, *Austine* preached tythes; and the King, Barons, and people beleaved, and obeyed and confirmed them: And observe thereon, their date began with the liberties entertainment; tything and preaching went together from the first, from the first and alwayes. 'Tis uncourteous to part old friends, hard to slope the skin from the flesh, dangerous what hath long gone and grown together. Accustomed food proves lightly wholsome, they that change for better often fall sick of their remedy, and to be weaned from that an aged man hath been accustomed to, and found wholesome from infancy, cannot but create much danger to the body by change, if not utter dissolution. Which 'tis easie to apprehend here; and sith, minister to Christ, and live by Tythes, are so intertwined together among us as they are, and alwayes have been, God grant the event extend not beyond good mens desires, intents, doubts, or fears, that the whole frame of the long continued Church, sink and fayle, upon stirring (if they should be stirred) this united and neer co-incorporate pillar
that

that hath hitherto outwardly sustained it. If it be charge or trouble, it may be born by the experience of a thousand years: If men love their ease now, so they did heretofore: If they are now wise, they were not then altogether destitute of wisdom: Lay together, that the clear policy of the Old-Testament went thus all along, the generall practise of the New-Testament hath been according; Here with us ever since the bright shine of the Gospel dispelled heathenish darkness, and from the very day-break of Christianity to this instant, it hath been judged best, and is; what new plots would do is uncertain, and may have the accompanying danger of experiment upon sick or sound bodies to disturb what is strong, or ruine what is decaying.



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CHAP.





CHAP. IX.



Ut to proceed : and in what follows we may perhaps light on more clearness and particularity : At the darkness of this remote distance we may not look to see every Mote, but as things draw nearer, so shall we see clearer. This of *Augustines* time may have been only in *Kent*, for there he settled and Chiefly lived ; the next will look to the cold Climate, and in the next Missive, (which was about 200 years after,) see what took effect more Northerly. *sc.* In an Embassage directed to *Offa* King of *Mercenland*, and *Ælfwald* K. of *Northumberland* with their Archbishops, where the Commissioners were *Gregory* bishop of *Ostia*, *Theophylact* of *Todi* (in *Italy* both) and they came first to *Offa*, (it seems because nearest) and he, (because the business might concern him) sent and called to council *Kenwolve*, (or *Kynewlfe*) King of the West Saxons. There the work was distributed : *Theophylact* stays about *Mercenland* and *Wales*; *Gregory* and his assistants go to *Ælfwald* (or *Oswald* King of *Northumberland* and *Eanbul* his Arch-bishop, where a Parliament was summoned, or that which had the nature thereof, a meeting of both States, (*Convenerunt omnes principes regionis tam Ecclesiastici quam seculares*.) and the 17 of their decisions this; *Decimum Septimum caput*: (1) *de decimis dandis sicut in lege scriptum est*: of setting tythes according to the Law. (2) The tenth part of all thy fruit, or thy first fruits thou shalt bring into the house of the Lord. And again by the prophet, Bring all the tythes into my barn, that there may be meat in my house, and prove me in this, if I will not open the windows of Heaven, and pour out blessing abundantly;

The account of these meetings in these and more circumstances is returned in an Epistle to Rome about the year 786. when sheshings were done by one of the Commissioners, and published by *Hymericus* in his *Constitutiones*: Vid. Cent. 8. cap. 9. col. 316. edit. 1624.

(1) *Ib.* col. 320.

(2) *Decimam partem ex omnibus frugibus tuis, seu primitiis deferas in domum Domini Dei tui. Rursum per prophetam: Adferre inquit, omnem decimam, &c. ib.*

abundantly: and I will rebuke the Devourer for your sakes that destroys the fruit of your land, and there shall not be a vine barren in your field; the Lord saith it. As the wise man speakes, no man can give his own alms of his own, unless he first separate to the Lord what from the beginning he hath required to be his. And hence often it cometh that he that will not give the tenth, is reduced to the tenth. Whence with all earnestness we command, that All study to give the tenth of all they possess, because it is the Lords peculiar, (or reserve) and live of the nine, and be bountiful as they can.

This was proposed in the Assembly, and besides the King and Clergy, confirmed with the assent and subscription of all the Elders, Captains, and people of the land, (1) consenting the Judges, Peers, and Nobles: And so to King *Offa* and his Elders (or Senators, or Councillors, *Senatores* is the word) who did the like, his Princes and Clergy setting their marks: *Brorda Dux signo sancta crucis subscripsi.* Faxwaldus *Dux subscripsi.* Beroaldus *Dux subscripsi.* Othbaldus *Dux subscripsi:* with a cross as the manner then was in their serious and religious confirmations.

A most observable Law, says Mr. *Selden*, if it be genuine, (as why should it not?) being made by both States, and of two Kingdoms: It is not like *Illyricus* forged it, or would venture it to light, without some Authentick authority, considering who he was; and what he is there a doing: the phrase, stile, and forme speake much the tone of that age: Our (2) Sir *Henry Spelman* follows him in the substance, though not in the circumstance, giving it due place in our Councils since published; and unless we will question every thing, why should we this? He hath added the name of the place, *Concilium Calchuthense*, that is either *Chalchuth*, or *Calchuth*, or *Celchyth*, or *Cealtide*: for these several variations I find; which *Camden* places in *Northumberland*, though he had rather finde it in the higher Climate of some part of *Mercia*: I should seek for it between *York* and *Durham*.

(1) His quoque saluberrimis admonitionibus, Pre-byteri, Diaconi Ecclesiarum, & Abbates Monasteriorum, Iudices, Optimates, & Nobiles uno opere. uno ore consentimus & subscripsimus. 15.

(2) Vid. Concil. Brit. p. 291. et pag. 298.



CHAP. X.



One thing more is observable, that although *Kenulph* King of *West-Saxon-rie* were present at the first delivery of the Letters, we hear no more of him afterwards, the approbation and subscriptions having onely the countenance of the more Northern parts; for Tythes may not yet have been generally settled, save in *Kent*, by *Ethelbert*; and *Mercia* and Northwards, as but now; which yet was after done ere long, and namely by that *Celebris donatio Ethelwulphi*, so much spoken of. This clapped the severe and absolute injunction upon all the Kingdom, (having power so to do, as the other had not) infolding every part that was under his power, (and all was) under the same constraint, so that now to Tythe was as generall as to reap, and by a Catholick command from sea to sea, and from the flood to this world's end, Gods Ministers had now an appointed and settled livelihood wheresoever man had.

For the better understanding whereof, this of story would be taken in by the way: That (1) *Egbert*, this King *Ethelwulphs* father had gathered together (no longer before) the dispersed pieces of petty-Royalties here, into one greater Monarchy, and bruising and battering the Coronets of seven (at the remainder of seven) lesser Kings, had cast them all into one greater Crown, moulded for his own head, and left the power to this his son, under the Title of Monarch of the Nation, or King of England. A fit time to do any great work, and make or perfect such a change, as should be Catholick and uniform; not now, This and That,

(1) Cognoscendum igitur est, quod eodem hic titulo utitur *E. Ethelwulphus Rex*, quo *Egbertus* pater suus bellicosissimus acquievit, cum universam *Heptarchiam* suam subjugasset ditioni: and *hæc*, *Vid. Spelm. Concil. pag. 351 & 352.* *Speed. Chron. lib. 7. chap. 31.* *Polyd. Virgil. li 5. pag 89, 90.*

but one and the same throughout the Nation. Before him, it was King, (or Kings) of *Britain* till the *Cæsars* came: Then, *Anlus Plancius, Ostorius*, or others, Lieutenants of *Britain*: after, the fell Saxons gave denomination to their severall shares of a conquered Heptarchy, and we had South, East and West-Saxons, besides *Kent, East-Angles, Mercia*, and *Northumberland*: But this *Egbert* mastered All, brake (2) the image of *Cadwaline* last King but one of the *Britains* triumphantly placed over *Ludgate*, crushed the power, and obliterated the partiall names of his own Countrymen, and made all stoop to his sole Command, under the new name of The Kingdom of *England*, (whereof he was sole Monarch) which ever since through ages hath to this present remained.

These things prepared, as was said, for the uniformity of any work to have its extent and operation upon All, and being remembred, makes way for that Donation, which heed, is Hire given under that name: Other before may have had the substance, but they had not the proper term, this both name and thing, under the title of, *Celebris illa Donatio Ethelwulphi*. Which what it was, take information first from him that had a great hand in preserving the Common-law from the spoiles at the Conquest, and lived neer those times, *Ingulphus*.

The most noble King of the West-Saxons (saith he) *Ethelwulph*, when he had returned from Rome visiting, with his son *Alfred*, the habitations of *Peter and Paul*, &c. by the willing assent of all his Prelates and chieftes, that under him were over all the Provinces of *England*, had then first indowed All the English-Church (for some peices had been before, but there wanted a Soveraig power, or the union of the parts

to

(2) *Serv. Chron.*
in the life of the
Egbert, pag 99.
& *Speed*, ubi sup.
fol. 6.

Inclutus Rex Westsaxonum Ethelwulphus, cum de Roma ut limina Apostolorum Petri & Pauli, ac sanctissimum ipsum Leonem multa devotione, una cum juniore filio suo Alfredo peregrè visitaverat, noviter revertisset, omnium prælatorum ac principum suorum, qui sub ipso variis provinciis totius Angliæ præerant, gratuito consensu, tunc primo cum decimis omnium terrarum, ac bonorum aliorum sive catallorum universam dotaverat Ecclesiam Anglicanam per suum Regium Chirographum confectum inde in hunc modum.

Regnante domino nostro in perpetuum, dam in nostris temporibus, per bellorum incendia, & direptiones optimarum nostrarum, nec non & vastantium crudelissimas hostium depredationes, barbararum paganarumque nationum multiplices tribulationes ad affligendum nos pro peccatis nostris usque ad internecionem, tempora cernimus incumbere periculosa.

Quamobrem ego Ethelvulphus Rex Westsaxonum cum consilio Episcoporum ac principum meorum consilium salubre ac uniforme remedium affirmantes, consensimus, ut aliquam portionem terrarum hereditariam, antea possidentibus omnibus gradibus, sive famulis & famulabus Dei Deo servientibus, sive laicis miseris semper decimam mansionem, ubi minimum sit, tum decimam partem omnium bonorum in libertatem perpetuam donari sanctæ Ecclesiæ dijudicavi, ut sit intacta & munita ab omnibus secularibus servitutibus, imo regalibus tributis majoribus & minoribus, sive taxationibus quæ nos dicimus Winterden, sitque libera omnium rerum, pro remissione animarum, & peccatorum nostrorum ad serviendum Deo soli, sine expeditione & pontis extruptione, & arcis munitione, ut eo diligentius pro nobis ad Deum sine cessatione preces fundant, quo eorum servitutem in aliqua parte levigamus. *Ingulph.*

(1) Rex verò Ethelvulphus pro firmitate ampliore obtulit hanc chartam scriptam super Altare sancti Petri Apostoli: & Episcopi pro fide Dei illam acceptant, & per omnes Ecclesias postea transmittunt in suis parochiis publicandâ. *Ingulph. ubi sup. fol. 6.*

position) but that it be devoted to Gods service alone, that the possessors may pray so much the more diligently for us, as they have fewer occasions to disturb them. This was done at *Winchester* in *S. Peter's-Church*, *Anno Dom. 855.* present and subscribing all the Arch-Bishops, and Bishops of England, and *Beorred* King of *Mercland*, *Edmund* King of the *East-Angles*, and a numberless number of Abbats, Abbesses, Dukes, Earls, and Chiefs of the Land, and other approving beleevers: And the (1) Charter was offered upon the Altar, and there received for more religious confirmation.

to extend this good work over All) with the Tythes of All lands (mark the extent again) and other goods or catties, which he did by his Royal Parent, thus:

Our Lord Christ reigning, but we tossed up and down &c. wherefore I *Ethelwulph* King of the West-Saxons with the advice of my Bishops and Princes, resolving on some wholesome remedy, have agreed that some portion of my lands formerly inheritable by whosoever, should now as to the tenth of the whole be set aside (for thus I conceive to be the sense, the words scarce affording any, but by comparing other accounts, this seems the thing meant) for the servants of God, and a like tenth part of my goods for the Church; so free that it yeeld no secular service, nor tribute (more nor less) nor *Winterden* (or *Witterdene*, a kind of im-

This

This I take to be the sence of what was there done: (2) *Matthew Westminster*, (3) *William Malmesbury*, *Ethelward*, and others give several accounts, but tending this way, and so great consent is in substance, though variation in expression, that no one can doubt some such thing was done, men so much varying yet agreeing to report. No one undertakes to make good all of every thing he makes use of, and here was interspersion of Abbots and Abesses, offering at the altar, with Saints and Angels interested and the Virgine *Mary*: but such commixtures do, we know, no more invalid the strength is adjoyning good and sound, then the like in *Magna Charta*, or the most of all ancient Parliaments, or some dispersed spots in the Common Law. He that shall once give his busie humor leave to work, and question things sufficiently done by some infirming circumstances, will soon leave little enough of approved firmness (by the same strict rule of estimation) anywhere, no not of those foundations whereon are raised and stands the stability of the chief worldly things we here enjoy. This is sure, the grant was made, and let the enjoyed benefit speake the fruit to our time, the providing for a helpless Church, and it should seem so firm it needed not be again, nor was after; for 'tis observeable the stile henceforth changed, and men do now no more Grant, but Confirm; nor had they need Part with so much as Assure, nor voluntarily Give, but yeeld to Pay.

Which we shall observe as we go along: In the mean while as to the doubtful words, various hath been the construction, and learned revisors have not all found the same thing in them.

(1) *Jo. Stow* takes it to be a parcel of land: (2) Doctor *Tildestey* contends for it by six reasons: Sir *Henry (3) Spelman* (inclining thitherward) knows not where to finde the benefit save in the parsonage house and glebe (though it may be well enough thought how they came in afterward, and otherwayes.) (4) *R. Hollingshead* flubbers it over with a right or liberty (from burdens) to tythes, (so (5) tythes Then in his

of England, in the life of this King.

be free from all Tributes and regal service.

(5) He ordained that Tythes and Lands due to holy Church, should Speed hist. lib. 7. cap. 32. fol 6.

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acknow-

(2) *Adams*. 855.

(3) *Goff. Reg.*

Ang. lib. 2. cap. 2.

(1) *Chronicle in the life of K. Ethelwold*, pa. 99.

(2) *Animadversions on M. Sildens History of Tythes.* cap. 8. pag. 173.

(3) *Concil. Britan.* tom. 1. pag. 352.

(4) *In his History*

(6) *Martyrolog.*
lib. 3. pa. 136. ad
an. 844 in the
life of Ethelwulf.
(7) *Ier. Stephens*
in pag. 132. of
Sir Henry Spelman
of Tythes.
(8) *Mr Se'den in*
his Hist. of Tythe
cap 8. pag. 206.

acknowledgement were.) (6) Mr. Foxe somewhat faintly; the tythe of the Kings lands and goods in *West-Saxon-ryck*; (with freedom from servage.) But a (7) late setter forth of a very learned and pious tract of this argument alledged it for a perpetual right of tythes: and above All, (8) he that had compared most accounts and was as well able to judge as any; and now after neer thirty yeers of painful and successful study is yet living, and ready no doubt to make good his constancy, and justifie his opinion, then published, and now appearing yet revok'd, makes it out clearly for a right and law of tythes: His words are these.

If we well consider the words of the chiefeft of those ancient, that is, *Ingulphus*, we may conjecture that the purpose of the Charter was to make a general grant of tythes payable freely, and discharged from all kinde of exactions used in that time according as the Monk of Malmesbury, and John Pike in his supplement of the History of England express it. *Decimam (scilicet) omnium hidarum infra regnum suum a tributis et exactionibus Regis liberam Deo donavit: that is, granted the tythe of the profits of all lands, free from all exactions. For the granting of the tenth part of the Hides or Plowlands, denominated the tenth of all profits growing in them as well as Decima annuatim sicut aratrum peragrabat, which is used for the tything of the profits, in the Laws of King Edgar, Ethelred, &c. and doubtless Ingulphus no otherwise understood it then of perpetual right of tythes given to the Church, where he remembers it with tunc primo cum decimis, &c. So that the tythe of prediall or mixt profits was given, it seems, perpetually to the King with consent of his States both Secular and Ecclesiastick, and the tyth of every mans personal possessions were at that time also expressly included in the gift, because (it seems) before that, (hitherto that learned man) the payment of all tythes had commonly been omitted. Not so neither; for what was then the operation of those weak, and yet intended strong and powerful Canons before mentioned, made with so good advice, and strengthened with the twisted powers of both States in Mercia and Northumberland, besides what in Kent, a Rege, Baronibus & Populo? But for All the land*

it seems none before had power of imposition; and for *West-Saxony* none had attempted; (for the King that was present at opening of the letters, we found not there at the conclusion of the businesse (1) before :) So that *Tunc primum* (1) Pag 70. for this and for All together, the decree might go forth here successfully, and the liker it did, for that (as before) we read of no more Donation, but Confirmation, no need to Settle after, but order, as was said, to Pay.

So that considering the power was then vested in the Monarch-granter, and also the consent of Tributary, and, as it were, pupil-Kings, with Nobles, Peers, and all their people: Consider likewise the interpretation of dark words by those whose inspection was like to pierce deepest into the meaning of what was delivered (or is perplexed) with obscure expression, And after interpretation fairly setting of such a purpose, we need not doubt to conclude: That so long agoe as those remote times, about 800 years since, above 200 before the Conquest, even then when the Common Law was but in her swadling-clothes, whereof little hitherto, (if she were then born, as I beleieve she was,) Even then, and as soon and fast as we may believe the power of Christian Religion to have had its work in the bosome of beleivers to make them contrive a continuall and settled support for their soul-saving new-come Gospel, Tythes had a publick vote, which created a legall Right; And, though I will not say All was done accordingly, and the objection of after Arbitrary consecrations possible in some sense, may take place in their way notwithstanding; yet as farre as Law may create a right, Then were Tythes no longer a part of Benevolence and Bounty, but of distributive or retributive Justice, every one living within the compasse of the Church being bound to pay back this support for the Ministry thereof, in fulfilling those generall Canons of the New-Testament, that call for maintenance, and would not have the labourer uncertain of his reward, but the Oxes mouth unmuzzled (to take thus much) and the Catechist to partake with the Catechumene in all his goods.

For we are not to look upon Regall and Legall commands, as empty Cracks, fit onely to fill the world with noise and clamour, and exercise the chat of the busie multitude, or learned mens discourses, but Canons well mounted, which being discreetly levelled also, are able to make their way through whole Squadrons of opposing Rebels to Law and Justice, of that irresistibile power, that though private men would, they cannot contradict, evade, or gainsay; As being those words of publick vote and highest authority, that if they say, Yes, will have no Nay, The most serious disputes and results of Reason that are extant amongst men, and that have this soveraign property always annexed to them, That they of all other look not to be Disputed but Obeyed. *Lex est sententia, qua bona tum precipiuntur, tum mala prohibentur*, (sayes Jo. Calvin) *Ius est autoritas seu facultas agendi secundum legem. Iustitia est virtus perducens ista ad exercitationem*. Proinde quoties audis has voces, *Lex, Ius, Iustitia*, statim cogita, monente Oldenb. *re divinum aliquid atque excelsum audire, hoc est, veram & a Deo ipso dictatam honestatis formulam*. Almost the voice of God, and not of man, as if they were.

Lexic. Jurisprud.
 pa. 526. in vocab.
Lex.

Neither is one thing more to be omitted, who was present and assistant at this great work, Him I take the world to have since owned and remembred by the reverencing name of (1) St *Swithune*: formerly the Kings Christian Tutor, now his Chaplain, Bishop of *Winchester*, and (2) successor of the King himself in that See, blessed by God to keep the

1) *Vid. Spelm. Con-*
sil. rom. Eod. pa.
 349.

(2) For the King was committed first to the Care of *Helmeſtan* Bishop of *Winchester*, and by him consigned over to *Swithune*: *Helmeſtan* dying, he was made a Deacon, and eldest, if not Conſecrate Bishop of *Winchester*, and thence refused to the Crown. Speed *Hist. lib. 7. cap. 32. sect. 1.*

— subdiaconatus ordine initiatus. Polyd. Virg. *Hst. lib. 5. pag. 91.*

Vid. tow. Chron. ad a. 829. & Hen. Huntingdon. lib. 5. pag. 348.

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their own hands, (3) *Tuisco*, *Woden*, *Thor*, *Frea*, *Seater*, (4) *Herthum*, *Flint*, (5) *Ermensewl*, (6) *Tibba*, (7) *Eoster*, and such other sometimes worshipped for Gods and Goddeses here, whose names are now either almost happily forgotten, or if remembered, not very easie to be understood. But it seems the Holy Christian *Swithune* joyned in with his formerly pupill, now Lord and King to keep him close, (& in him virtually and potentially All,) to the heavenly teaching of the Bible; and that the doctrine thereof might continue. they added this pillar of worldly maintenance (the having a hand wherein might procure *Swithune* so reverend an estimation in Christians memories ever since,) (according to the patern in the mount, their guide, *Levi* of the Old Testament,) To sustain and provide for the Preachers and Ministers thereof: And God so blessed, that as that gift has remained sacred and inviolable hitherto, so by it the ministration and Ministers of sacred Christian Mysteries have had a subsistence ever since, and endowed preachers been as so many Candlesticks then set up, which resting on this pillar, have held forth that light of heaven which yet we enjoy to this present day. Future superstitions may have made unnecessary additions, and the honour justly given to the memory of this good man, for a work so gloriously deserving, in the name and reputation of

(3) The names of sundry Idols here worshipped before the Gospel enlightened: And as the Pagan Romans made theirs prelude over the days of the week, whence *Dies Solis*, *Dies Luna*, *Mercuris*, *Marsis*, &c. so here they called the days from them, if not more, and we yet retain the memoriall thereof in *Sunday*, *Monday*, *Tuisca-day*, (or *Tuesday*) *Woden-day*, *Thor-day*, *Freday*, & *Seater-day*. More appearance of truly evil, then in some other things in jealousy branded for Idolatrous: See *Vorstegean. Antiq.* pag. 10, 11. & pa. 68, 69, &c.

(4) *Herthum*,) *Suroorum*, & *Borea'um Germanorum* *Dea*, *perinde & eorum Anglorum*: quae cum *Saxonibus Britanniam nostram applicantes*, *nomen nostratibus retulerunt*. *Cultum & immanitatem Dea refert Tacitus*, in *Mor. Germ.* *Rendigni deinde*, & *Aviones*, & *Angli*, & *Varini*, — in *commune Herthum id est*, *Terram matrem colunt*, *earumque intervenire rebus humanis*, *invehi populus arbitrantur*: *Stoneheng* in *Wiltshire* thought to have been a Temple to this Goddesse, in plain English, *The Earth*: *Vid. Spelm. Gloss.* pa. 350. in *Herthum*.

(5) *Vorstegean*, pa. 79, 80

(6) The Goddesse of Hunters and Falconers, worshipped at *Rhail* in the edge of Rutlandshire, near *Stanford*: *vid. Camden. Britan. in Rutlandshire*. Another place of note for like worship whereto was *God-an-ham* (in Beke's time *Godmundingham*) near *Beverley* in *Yorkshire*, by the priest thereof *Cyfi* profaned and delivered over to Christian worship: *id.* pag. 702. *S. Pauls* in *London* was dedicate to *Diana*; (some Houses adjoining are called *Dianaes Chambers* yet.) The Church of *Westminster* to *Apollo*, *id.* in *Middlesex*. God bless us: that we ever live to see the return of these Banished and forgotten Idols to their native homes? Or the removall of what fast kept them out (being banished) give cause of their Fear!

(7) Or *Oster*: a Goddesse giving denomination to the Month of April, called by the Saxons, *Oster-monat*: we yet retain the name of *Easterthence*, hapning usually in that month.

a Christian Saint, have contracted after rust and blemish by the zealous ignorance of times and men; who not contented to overdoe, nor esteeming reverence any thing without worship and adoration, thought the Saint not enough, unless he were advanced higher to the name and reputation of a *Divm*, or petty-God, and so partaking now in nearness of kinde as well as name with his Sovereign, must not wait any longer about the footsteps of the Throne, but be lifted up to sit higher on some lower seats of honour with his maker; which cast a blemish on the very Purity of heaven, and as one said, made the Christian world begin to be ashamed of nothing more then of her Saints, which were indeed the honour and glory of the world.

But howsoever the work was gracious and glorious, of wonderfull influence to the piety of all following times, such as may speak it self accessory to much of the practised publick Worship that hath been exercised ever since to Christ his honour, in our land, and hardly to be paralleled by any act of equal dimentions, save perhaps the contrary work of darkness, (if mens coverousnesse should be so far hearkened to,) in with-drawing this support in order and preparation to the destruction of Religion it self, and bringing Apostasie to that we had before Tythes were paid, *Tuisco, Woden, Thor, Fred, &c.* or if these be forgot, taking up that is nearer hand and known, the sensuall dreams of *Mahomet*, (though such (1) worshippers pay their Tythes duly,) or indeed no one can foresee probably what. And if these be not the dreames of some troubled minde, but the sober and well-advised thoughts of one jealous for the honour of *His God*, not the melancholick muses of some dis tempered fancy, but the calm and well-composed serious consultations of one tenderly carefull, and tremblingly fearfull about the honour of *his beleevved Saviour and Redeemer*, prudently casting what may be, yet providently fore-casting it may not be, and yet but reasonably doubting too what is like to be; grounded onely on rationall conjectures, and accompanied with manly feares, lest *Christ* his name should be wiped off from the earth, *His* honour disparag'd, *His* worship undermined,

(1) Which they may have from the Mosaicall law, *Salomon*. *Wise of Tythes* c. 3. *1st ult.* *Joan. Baptista* *Alfagui* who had been a Mahometan priest, sayes, 'tis one of the great sins whereof the two inquisitour Angels examine souls after death, Whether they have paid Tythes duly? *Page*. *Harefeger*. in the *Postscript*. The dreadfull manner is set forth by *M. P. 1. chaf. lib 3. cap. 12.* p. 304. *Edm.* 1614

His faith destroyed, and *Himself* forgotten where he hath been worshipped for a God; It would then be thought on again and again by all those who pretending to worship *Christ* can think of undoing his Ministers, and in (or with) love of the Master, give themselves leave to doubt whether they may strip of their Own his Servants that doe his Publick work, leaving Religion as naked as in the day she was born here, to be covered by meer Charity of the Parish, or provided for by some slack and slender weekly allowance: And (then which cannot come a worse mischief) intrusting the Religion of the most High God, and its stability, to the tottering contributions of fickle Men, who if they be of one minde to day, may be of another to morrow; what now they love, then loathing; and always esteeming their wealth dearly, cannot but be continually loth to part with what they love: (which if it should be, O Jesu. (As *Joshuah* sometime threw up complaint to heaven upon a pang of zeal, in like danger,) *What shall be then done to thy Great Name!*) But ere this be, more stones must be stirred, 'tis like, then we are aware of, or are yet thought on for motion: intwisted estates doe not use to decay single; nor that sink alone of it self, that settles on the same floor or bottom with others: The strength of property it self must grow weak, ere these dues can be shaken, and the owner of the nine parts be left little enough by the Same reason, (unlesse by arbitrary disposition, because 'tis fit he should have it,) before This Tenth settled with them, and by equal strength of right can be taken away. Think of ransacking the Tenth rafter out of the roof, or the Tenth stone out of the foundation, and then compare and Judg. But think withall, that rafter, that stone was there placed in *Swithunes* dayes.

Josh. 7. 9.



C H A P. X I.

WE have done with *Donation*; A thing can be given but once, and this hath been here all over; now next, as annexed thereto or a part thereof should follow, *Tradition*, without which the (1) Lawyers say *Donation* is invalid, forasmuch as this in act (2) parts with the thing, and till it be, even a gift remains with the Giver: but the expectation hereof may well be superseded here, forasmuch as the right of tythes is a Right, and so not capable of delivery: For it is a Right, and not (3) a body, which can nor give, nor take; and the rules of the law must not think to alter the nature of things, or make that required, which to be cannot.

(1) Item non valet Donatio nisi sub- sequatur Traditio, quia non transfertur per homagium res data, nec per chartam vel instrumentorum consecrationem, quamvis in publico fuerint recitata. *Bracton. de acquir. rerum dom. cap. 18. sect. 7.*

(2) Videndum est primo quid sit Traditio: Et est Traditio de re corporali propria vel aliena, de persona in personam, de manu propria vel aliena, (sicut procuratoris, dum tamen de voluntate Domini) in alterius manum gratuita translatio. Et nihil aliud est Traditio in uno sensu, nisi in possessionem ductio. *id. ibid. Sect. 2. vid. Flet. lib. 3. cap. 15. Sect. 4.*

(3) De re corporali idem dicitur, quod res in corporalis non patitur traditionem, sicut ipsum Jus, quod in se corpore inhaeret: et quia non possunt res incorporeales possideri, sed quasi, ideo traditionem non patiuntur sed quasi, nec adquiruntur nec retinentur nisi per patientiam et usum. *Bract. ubi supra fol. 39.*

Iura siquidem, cum sint incorporea, videri non poterunt, nec tangi, et ideo traditionem non patiuntur, sicut res corporales. *id. cap. 23. Sect. 1. fol. 52.*

Item acquiruntur nobis temporalia (corporalia *I beleve, it should be,*) per traditionem: res enim corporales patiuntur traditionem: scilicet vero de incorporealibus, ut sunt jura, advocaciones ecclesiarum, &c. *Flet. lib. 3. cap. 2. Sect. fin.*

Tradition is here therefore set aside, in other cases necessary, and this Gift being perfect without it, our next must be of Ratihabition or Confirmation, under which head march all the following allegations to our times, to (4) strengthen the frame that is now built, and inforce from time to time to part with and give out what was here set aside and appointed to be given; What those acts in law are shall

(4) Confirmare est enim id quod prius infirmum fuit simul firmare. *id. lib. Eod. cap. 14. sect. 5.*

shall not praviouſly take up much inquiry from (5) *juſti-*
nian or (5) *Westminster*, I content my ſelf with their (7)
 general nature, to ſettle what has been (8) placed; *Rem*
ratam haberi, that that which is, they do, as the (9) word
 is, Confirmē.

bitionis eſt, ut voluntatem noſtram declarem, & negotium, quod alioqui ad nos nihil pertineret, noſ
 ſtum faciamus. *Cabli. Lex c. Turisprud. pa. 789.*

(8) *Ratibabit* eſt conſenſus, qui negotium perfectum inſequitur: *Id. ib.*

Rati enim habitio ad confirmationem prioris poſtulat pertinet: *F. de bonorum poſſeſſio-*
nibus: l. Quotiens.

(9) Videndum eſt igitur quid ſit Confirmatio: & eſt confirmatio prioris juris & domini adepti firma-
 tio, cum prima firmitate donationi; nihil enim novi attribuit, ſed jus vetus consolidat & confirmat:
Drakon. lib. 2. cap. 35. ſiſt. 2. fol. 58.

Men, no doubt, were loth to part with their own, to
 weaken their worldly eſtates, though it were to ſtabliſh the
 Religion of the moſt high God, to make them baggs which
 as our Saviour (1) ſays *wax not old*, to (2) *lay up treasure*
in Heaven (3) *αποθημιζουσιν εις το μαλλον,* for another
 world, and to make (4) friends of this Mammon of unrightcouſ-
 neſs, that when need is, they may receive into everlaſting ha-
 bitations: This made the lawes frequent, the repetitions man-
 ny, the reinforcement earneſt, the tranſgreſſion pœnal, and
 each continued in and through every age; that ſo, if might be,
Ananias might be met with at every turn, and his wife *Sap-*
phira kept back that neither ſhould venture again to pluck
 back what onely true piety and the love and fear of God had
 prompted them at firſt to give forth. And now behold the
 laws are not to pay, but be puniſhed if men paid not.

- 1) *Luke 12. 33.*
- 2) *Matth. 6. 20.*
Cap. 19. 21.
- 3) *1 Tim. 6. 19.*
- 4) *Luke 10. 6.*
Sermone etiam
admonemur di-
vino, terrenis
cœleſtia, & ca-
ducis his noſtris
æterna illa pro-
mereri: Esch. ſiſt.
in præfat. ad leg.
ſpeaking of Tythes.



CHAP. XII.

THe first that occurs, (in time and so in our order) is that of *K. Alfred* and is in the preface to his laws, (remember we are now in the dawning of the common-law, and this allowance shall grow up with it,) which, before, he our of modesty acknowledged to borrow from the tables of his Ancestors; and speaks in brief, thus: (1) *Thy tything person, or thy tythes give thou to God.* If any did not, it was after agreed between (2) him and *Guthrunn the Dane*, that the stranger should pay *lahslite*, that is, as 'tis commonly interpreted, twelve Ores, and the English his forfeiture, *as with out this, no peace*: which League and Law was after confirmed by (3) *K. Edward* (*Alfred's* son) and the same *Guthrunn*, and oftentimes after repeated and established to the common profit of the Kingdom

K. Acthelstane is after very earnest about the year 930 by all that is sacred (4) conjuring al under his Jurisdiction to pay all: *tam vivorum animalium, quam annuorum terre provinciarum decimas*, both of Cattle and fruit: His Aldermen and Reves he commands to do the same, and seriously advises to consider what *Jacob* vowed, my tythes and peace-offering will I offer unto thee, and what is elsewhere with severer enough; If we will not give the tenth, the nine other parts may be taken away, and nothing left but the Tenth. Remember he was not a Church-man but a King, and so spake no doubt as seeing expediency enough of what he spake thus and for his people.

1) *Præfat. in leges Alfred. c. 38. Lamb. Arch. p. 19. Spelman. Concil. tom. 1. p. 360. 2) Vid. Leg. Eccl. ab Alured & Guthruno ib. pag. 377. cap. 9.*

3) *Hæc sunt senatusconsulta ac instituta, quæ primò Alfredus & Guthrunus reges, deinde Edoardus & Guthrunus reges, illis ipsis temporibus tulere. cum pacis fœdus Daci & Angli fecerunt, ac sese mutuo amplexi sunt. (a pars of the fœder that combined them together was a law of Tythes, which they agreed both sh. id pay.) quæque postea à sapientibus recitata sæpius, a. que*

ad communem regni utilitatem aucta, atq; amplificata sunt. vid. factus Edwardi & Guthruni. apud Lamb. Arch. p. 41. et Spelm. Concil. p. 390. & 391.

4) *Leg. Ecclæs. Acthelstani apud eund. p. 403. c. 1. Lambard. Archaion. p. 45. & Fox All and Mon. lib. 3. p. 149.*

Edmond his successor followed him, and (1) in a frequent Synod held at London about the yeer 944. as well of Lay as Ecclesiastical persons, (a Micelne Synod it was, a Parliament, no doubt) chargeth every *Christen man* to pay his tythes duly, and upon his *Christendom*. I omitted an Ecclesiastical Constitution made by (2) *Odo* Arch-bishop of *Canterbury* about these times, because it may be judged not binding; not doubting yet the common law, as then, to consist of such rules, (as they were after, of the Consistory) as well as the secular: For if this were not, there should have been no rule brought along with the Ecclesiastical Judge, for him to Judge by. 'Tis known how till the Conquerors days, when the Courts were parted, This Supervisor sate in the County Court, (as over a Provincial Presbytery,) to Judge with the Kings Reve, or the Reve of the Shire, or Shire-Reve (since Sheriffe,) the one to see Gods right done, as the other to see the Worlds; and what could be more expedient then that they should bring their severall rules along with them, the Church-man his Canons to rule there in fitting things, as the other his secular lawes? So that till the jurisdictions were parted, I doubt not to think without hesitation, this and such Canons, The Canon in general, was a part of the Common-County law, and so used, and after digested into a form by it self for the Consistory; whereto adding the way of tryal, *sc.* according to the Civil law, by citation, proctor, libel, &c. and such after superinducements, made the Court, as it was late found and left: But this by the way.

(1) *Leg Edmundi*
& c. Lamb. Arch.
pa 57. cap. 2. ppet
man. Conc. adan.
944 pag. 4:0.
cap. 2.

(2) *Decimo capitulo mandamus, & fideliter obsecramus, de decimis dandis, sicut in lege scriptum est: Decimam partem ex omnibus frugibus, &c. ib. ad an. 943. p. 412. cap. 10.*



C H A P. XIII.

(1) *Lamb. Arch.*
p. 62. ca. 3. *Spelman.*
Council. ad. ann. 969.
p. 444.

(2) *Nosti, quia*
Dei sunt cuncta
quæ percipis, &
de suo non ac-
commoda. rerum
omnium condi-
tori? non eget
Domina tuus,
non primum po-
stulat sed hono-
rem, non de tuo
aliquid exigit
quod refundas.
Primitias rerum
& decimas d-g-
natur petere, &
negas avare.
Quid faceres, si
novem partibus
sibi sumptis tibi decimam reliquisset? Quod certe jam factum est, cum messis tua pluviam sub-
benedictione jejuna defecit, & vindemiam tuam aut grando percussit, aut pruina decoxit. Quid vni-
supputas? Novem tibi partes retraxerunt, quia decimam dare nolueris. Constat quidem quod tu
non dederis, sed tamen Deus exigit. Hæc enim est Domini iustissima consuetudo, ut si tu illi decimam
non dederis, tu ad decimam revoceris. — Dabis impio militi, quid non vis dare sacerdoti? Aug. 11.
219. de temp. 10. 10. p. 370.

(3) *Leg. Cambr. Lambard. Arch. p. 101. fol. 8. Spelman. Council. ad. ann. 1032. p. 344. cap. 3. & p. 363. cap. 15.*

(4) *Leg. Hen. 1. apud Lambard. pag. 182. cap. 11.*

GO on to K. Edgar: and he was not far off, (within the same Century till:) which pious King (1) strengthened a that was before by adding to law and punishment a course how the one should be inflicted to further the Execution of the other. And, *He that will not pay his Tythe of Corn before Whitsuntide, his tythe fruit before the Equinoctial (or Church-fcet, (or Scot, or portion) before S. Martins day let him pay his forfeiture, saith he, as in the Doom-book.* What? *Let the Reve, Bishop and Church-Priest meet, and compel him, if he be unwilling to pay his tenth to the Church that he ought leaving to him but (2) the ninth: as for the other eight, let the Lord have the one half, the Bishop the other, and this without respect of person, whether he be the King or Thanes.* Which very course and penalty is afterwards approved and stamped for current by the (3) Danish King Knout in assembly of his wise men at Winchester, about the year 1032. with some inconsiderable alterations, And the substance continued to our (4) Hen. 1. time, since the Conquest, as appears by his laws lately published.

Something of the Church intercurres more about this time which, from the nature of the thing, it may be expedient be

to name; as an Ecclesiastical Constitution made under the same Edgar, That (1) *the people should be taught to pay to God that which of Right they ought,* (which mark was Then a Right, whether Humane or Divine, I inquire not; If this, it was the stronger; if but that, 'tis it I contend for: but a Right:) as Tythes and other things: And another calculated for the Northerne Latitude, (for the collection is stiled, (2) *Leges Presbyterorum Northumbrensum*) and bound up with K. Edgars lawes, where is penalty for every of the Kings Thanes (or lords) that detaines, ten half markes; for every land-owner six; for every Ceorle or Husband-man twelve Ores: And another written by Ælfrike (3) to Wulfine of the same general nature, thought not unworthy to be preserved among the undoubted monuments of that Age: All which I yet so slightly pass over, as that my judgment remains the same both one way and other as before; and for what was stamp't with the authority of the Church, that it had no doubt the Countenance of the Sate, to be then a ruling part of the Common All-ruling Law; which consisted both of Canon and Statute, (as they were after Called,) and each was a rule for what they did concern in the same Court, where both Jurisdictions were then Combined, and both their Lawes executed.

(1) Docemus etiam, ut Sacerdotes populum instruant, de his que jure Deo sunt reddenda: decima scilicet, & res aliz, &c. Canones dati sub Edgari apud Lombard. p. 71. Can. 54. Spelm. ad an 967. p. 154.

(2) Si decimas qui thanus est regis detin. etc. 10. pend. to scotmarcas, possessor prædiorum 69. & Cyllicus seu Paganus 12. grās. id. pag. 501.

(3) Ælfrike Can. ib. ca. 578. an. 14. & Lamb. p. 132.

CHAP. XIV.

The next Century gives us the (4) Parliament of *Enham*, made up of both States, as well Church as Peers under King *Ethelred*: in the contraction whereof is commanded, that, (5) *Gods dues be paid yearly, Tythe of young at Whitsuntide, of fruits at Allhallondride*: but in the larger latine,

(4) Concilium Enhamite generale, seu Parvaticum habitum Ælfredi Dorobornensis & Wulfstani Eboracensis Archiepiscopis A chipra-

fulun, ab Æthelredo Rege edictum, accessitq. Episcopis, & universis Anglorum optinatis, in die 5. Pentecostes celebratum. Circa an 1009 Spelm. p. 510.

(5) Iura Deo debita uniusquodque annuatim recte pendito, &c. id. p. 517. K. 10.

and

(1) *Id. pag. 527. cap. 10.*

(1) Sulh, vel potius Sullow (vel paululum immutata: o) plurimis in locis etiam nunc aratrum significat: almeis notioris est significationis quam ut interprete indigeat ullo, Ego me legisse memini in vetustissimo quodam legum *Ethelredi* Regis libello impostum tunc temporis in singula aratra Denarium unum. Ea forsasse pensio est quam illi Sulhalmes appellabant. *Glossar. ad Lambard. Arch. pa. 217. in vocab. Aratrum eldmo-syna.*

(3) Dubitaverit forte quispiam, &c. *Spalin. pa. 529.*
(4) *Beside what before:* Quodam tempore contigit

ut Regis *Æthelredi* edicto concrepante, Archipræsulumque *Elfrigi* & *Wulfstani* hortatu instigante, universi Anglorum optimates Die sancto Pentecostes ad locum ab indigenis *Eanham* nominatum, accis-
sent convenire: *Id. pa. 525.* And in the close; Hæc itaque legalia statuta vel decreta in nostro conventu Synodali à Rege *N.* magnopere edicta cuncti tunc temporis optimates se observaturos fidei-
spondebant: *Id. pag. 529.*

(5) Sc. at *Whitsuntide*, a *K. Edmundi* nam as *Easter*: In quibus celebratibus, (sicuti & in illa Nati-
vitatis Domini nostri) convocare Reges, ex antiqua consuetudine, soliti erant proceres suos utriusque
Ordinis ad fastum Regium adorandum, & Consilia regni ineunda, quod laus alibi declaravimus: *Id.*
K. Knuts gratas Cancellar. at *Winchester*, was after as *Midwinters tide*, or in Natalitibus Domini nostri
id. p. 529. & p. 560. *K. Bertholphi* before as *Easter* 3, (and a very Parliament:) *id. p. 344.* Ex more enim

& obsequii vinculo antiquissimo tenebantur proceres in tribus maximis festivitatibus; Christi sc. Nati-
litis, sancti Paschatis, & Pentecostes, Regi annuatim adesse, cum ad Curiam & personam ipsius exor-
nandum, tum ad consulendum de negotiis regni, statuendumque prout fuerat necessarium. Prodiere igitur
in diebus illis Rex solebat coronâ redimitus, & pro Fastu Regio se in omnibus exhibere: donec moris
labefactavit *Henricus 2. &c. Id. p. 347.*

and a copy of the same date of writing, Thus: *Let* (1) *the*
tythe of fruits (saith the Kingdom,) *and Calves, and Lamb,*
and other Ecclesiastical duties be paid yearly to the Lord at
sitting seasons: (2) *Eleemoſyna aratralis*, or *Sulh almes* (as I
am informed, a penny a yeers pention upon every plough,) 15,
days after Ester: Calf and lamb at Whitsuntide: tythe corn
about Allhallondtide; and all these to God, and by order of Par-
liament. (3) It may breed some doubt of the universality of
this power, because it is called a *Councel* or *Synod*, which use
to be the titles of Ecclesiastical meetings: But this is satis-
fied in part by a learned Kinght, that it 1. (4) consisted of
both States. 2. was convened by the Kings power. 3. treat-
ed of things not of the Church. and 4. met at (5) *Parlia-*
ment time: which as times then were, was thrice a year.

For in those dayes at the three great feasts both the King
expected his Nobles to come unto him for greater solemnity
of the time, and being met they used to consult, *de arduis*
rei-publicæ negotiis, which was Parliament work: (which also
continued long after, as appears through the course of *Mat-*
thew Paris his History, who wrot to *Henry* the third.) So
that I doubt not to affirm both that this was a Parliament,
and that one such meeting in three yeers is no such news in
England; for of old (beside the law, and observation there-
of in practise about *Edward* the third's time, for one) before
that they had usually three Parliaments every year.

In the same Kings time was also another general meeting at *Habam*; *Hæc instituerunt Ethelredus et sapientes ejus apud Habam*, is the title, and part of the text (from the (1) Abbot of *Forneaux*.) thus :

(2) *Let every Thane (or lord) Tithe all that he hath : And (3) we command that every man upon his love to God and all Saints give his Church Scot and true tythe, as in the dayes of our ancestors, (it was no new usage, then, but inherited from the days before) that is, his tenth Acre, as the plough shall goe : and let every custome be made good, super amicitiam Dei, for Gods love to the Mother Church to Whom it belongeth, and let no one take from God (mark the weighty engagements still) that Which belongs to God, and our Predecessors (again) granted.*

antecessorum nostrorum quando melius fecit; hoc est, sicut aratrum peragrabat decimam acram : Et omnis consuetudo redlatur super amicitiam Dei ad matrem Ecclesiam cui adjacet, & nemo auferat: Deo quod ad Deum pertinet, & predecessores nostri concesserunt : pag. 531 ca 4.

(1) *Hist. Journ. fol. 65. apud Seid. de decim. p. 325. since Published by Spelman: Consuet. Ann. 1013. v 531.*

(2) *Omnis Thanius decimet eorum quod habet. Ib. c. 1.*

(3) *Et precipimus, ut omnis homo super decimationem Dei & omnium sanctorum det Cyrcellorum, & rectam decimam suam, sicut in diebus*

CHAP. XV.

BUT none did more in this kinde then the Conquering *Dane*. First, he (4) sends from *Rome*, mindeful of Justice here, to all his Officers and Ministers, threatening if *all dues were not paid, particularly Tythes, the disobedient should smart from the sharpest edge of his severest laws*. Secondly, when he came, (*Nec dicto fuit deterius factum*, as saith the Historian) he caused all the (5) ancient laws to be revised, especially those of his Predecessor *Ethelred*, (amongst which were for tythes, as may be remembred from but now.) and Thirdly, (6) by more assurance and past all conjecture he re-

inreminatione regie multæ perpetuis temporibus observari precipit. Mallesbur. de Gest. Reg. lib 2. cap. 11.

(6) *Quotannis quisque Deo jura justasque debitiones ritè persolvit : Arationis quidem elemosynam ad decimum quintum idus Paschare diem pendit : forum decimas ad Penrecosten solvit : terre denique : suorum decimas reddito ad festum omnium sanctorum celebrat : Orifnot. an sand. Vid. L. Eccl. Canons. & 8 Spelm. p 544 & c. 15. p. 543. De decimis ad Ecclesiam Thani pertinentibus. ib. c. 11. p. 545.*

(4) *Vid. Eustach. Canuti Regis ad Anglorum principes anno Regni sui 5. Domini nostri 1031. in cod. pag. 535.*

(5) *Omnis enim leges ab antiquis regibus & in xime ab antecessore suo Ethelredo latas, sub*

(1) *Whence be-
fo. a. pag. 84.*

vived & awakened that notable past law of K. (1) *Edgar*, made up of 3 parts twisted together for mutual strength, *Rule, Punishment, & order for Execution*; willing that men should pay, if they did not, they should lose 9 of 10. And who should see things done, but they who by their work were to be rewarded for their labour? Which was much, and as much as could be expected, in tender regard to what (of that little account is,) findes so much place, and in very fast and safe accordance to what had been before. Indeed it should be so: States should be constant. Not uncertainly whiffing up in loose and various decrees, but be gravely stayed and fixed to their received orders, Not giving the world occasion to think their Laws are Humane Ordinances by this, That they change like men; but partaking in stedfastness with him from whom they are, resemble Him in Immutability who is the Same for Ever. Justice and Truth are never but the same; Why should their Rules vary? The same thing cannot be right and wrong at times; why should the Lesbian rule warp hither and thither as 'twere to say it is! It may make the jealous world suspect ere long that Lawes are nothing else but witty devices to serve the contrivers own turn, if, like the sayles of a ship they may be shifted and turned hither and thither upon occasion: and cause them with perhaps rather they had no ordinance at all, then what may be planted against their own safety; finding suspicion in the sanctuary of their refuge, and doubting what was given for their wealth may prove an occasion of their falling. The firmness of a publick decree could never have found a fitter measure then that of the *Laws of the Medes and Persians which alter not*; wherein the world owes much of its happiness: nor can we ever hope for any more certainty of any thing we possess and call good on earth, then there is of Justice; and the rule and measure thereof is the constant Law.

Dan. 6. 8, 12, 15.

This the wise and victorious *Dane* knew, (perhaps by cherishing such axiomes and persuasions at home victorious which made him strike in as much as might be with the publick and established Laws, to shake the Kingdom the less by Conquest, and in their stability to provide for much of the whole)

wholes, and his own. As indeed this course often leaves a Kingdom safe with change of the head, and Government quiet upon any change of Governours. For the person at top is never so material as the diffused and incorporate Law throughout the body politick, which settles down and is conveyed, as the branching Nerves, into every the remotest member of the re-publike, and which if it suffer trouble by change, many a paralytical or spasmodical fit cannot but must needs go therewith, disordering the whole, and twinging the very heart; if these are forced out of the way, or suffer any considerable distention, laxation, mutation, obstruction, trouble or disturbance whatsoever; which also the next Norman Conquerour found or was taught; for the Nation that was in part willing (or were forced) to receive him, would never yet give consent that their laws (the sinews of the State) should be touched, which put him upon this hard Dilemma either to imbrace These, or be rejected by Those, to let Them alone, or Himself never should have been quiet.

C H A P. XVI.



OUR next step (the last on that side the Conquest,) is to *Edward, surnamed the Confessor*; That blessed man was blest indeed to be the Authour or instrument of much good to this endeared Nation. He first obtained help of God to remove and dispel that coarservation of tough humours about the throat, (*Strume*, the Physitian calls them, and since from this accident of their cure, *The Kings Evil*;) And, which was the greater miracle, obtained also the like wonder working power to be left inheritable by all his successors. He raised that stately and magnificent pile at *Westminster*, a Monument not onely of his own piety but also a repository of the Monuments of Nobles and

N

Kings

Kings ever since, who quietly sleep in that dormitory he re-
 edified and consecrated to this use from Pagan superstition,
 and under his roof have found ever since their peaceable, safe,
 and everlasting habitations: He was so zealous and successful
 for Justice, that when he was gone, the most people desired
 was but right his way; And as *Ziscaes* Drum, (he being dead,
 charmed the enemy to obedience or flight; so the Concessi-
 on of his Laws stilled their mutinies often, whence, at the
 importunity too, they have been continued in the Coronation
 on oath ever since. Lastly, his prudence discovered or acted
 self chiefly in this, that, (treading in the steps of *K. Knave*
 before,) he dreaded exceedingly all perillous innovations,
 and whatever wit or passion might suggest to the contrary,
 knew it was safest always hearkning to reason and going
 the way had been trodden; and therefore adhered to the
 rule by choice, that whatever others did, He would only be
 wise in the way of his Ancestors. To this purpose he caused
 to be searched, and by his authority reinforced the good
 Laws of the Land, which, whatsoever forward men may
 deem to the contrary, is still likeliest to be the readiest way
 to mens great desires of Happiness, Wealth, and Peace. For
 if Justice be the preserver of order, that the parent of peace,
 whence wealth & riches follow: to disturb the Law the founda-
 tion and rule of Justice, can be no less then to trouble the
 pure fountain whence those precious streams must issue
 whereas to keep that fast, is to hold the foundation firm
 whereon all the rest either are or may be built. He then be-
 gan not, but continued and confirmed this following order
 for tythes,

CAP. 8.

*De decimis ecclesia reddenda,
 de ovibus, et por-
 cellis.*

*De omni annona decima garba
 Deo debita est et ideo reddenda. Et
 si quis gregem equarum habuerit,
 pullum reddat decimum: qui
 unam tantum vel duas habuerit, de singulis pullis singu-*

Of all Corn the
 Tenth sheafe is due to
 God, and so to be paid,
 &c. But the English
 hereof was given be-
 fore, pag. 63.

los de
 vitul
 Et q
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D
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los denarios : similiter qui vaccas plures habuerit , decimum vitulum : qui unam vel duas , de vitulis singulis obolos singulos. Et qui caseum fecerit , det Deo decimum : Si vero non fecerit , lac decimo die. Similiter agnum decimum , vellus decimum , caseum decimum , butyrum decimum , porcellum decimum.

De Apibus.

CAP. 9.

De apibus vero similiter decima commodi. Quin et de bosco , de prato , et aquis , et molendinis , porcis , vivariis , piscariis , virgultis , & hortis , et negotiationibus , et omnibus rebus quas dederit Dominus , decima pars ei reddenda est qui novem partes simul cum decima largitur. Qui eam detinuerit per Justiciam Episcopi et Regis (si necesse fuerit) ad redactionem arguatur : (perhaps righter, adigatur.) Hac enim predicavit Beatus Augustinus , et concessa sunt a Rege , Baronibus et populo. Sed postea instinctu Diaboli multi eam detinuerunt , et Sacerdotes locupletes negligentes non curabant iniire laborem ad perquirendas eas , eò quod sufficienter habebant sue vite necessaria , &c. Leg. Edward. Regis. apud Lambard. Archaion. pa. 139. & Spelman. Concil. pag. 620.

Behold here a plaine law : as full as if it had been made in Consistory , as clear as evident and open words could express , as authoritative as might proceed from the King and his people , and as much to be revered as King S. Edwards Law : consenting much to what went before , and for what followed after , we know (and shall be made appear) has had as many after , successive , supreme confirmations as any publick act of this State ever had : Except the great Charter : nay , not except the great Charter ; into whose confirmation this was also by implication involved , and with it had life , strength , and fruit , even to the Petition of Right , as shall be hereafter shown.

It usually passes that this devout and wonder-working King was the father of the Common-Law , (which if , we see what shined from its morning beames ,) and that he gave it first life and being of no præexistent materials , as I beleieve he did , as it was common : for he , (a little to step aside ,) disliking the several ways of tryal that had been to his time ,

(1) Caniani
fuis, aliquando
habuerunt leges,
sed cunctibus iis
& Saxonibus om-
nibus sub West-
Saxonum ditione,
horum lege
vivitur. Angli le-
ge usi sunt (quam
vocant) Mercia
donec intrinsecus
Dani East Ang-
lie & Northum-
briz provincis,
suas inducunt
consuetudines, à

prioribus non in compluribus discrepantes. Hinc majoribus nostris triplex legum distinctio
perpreaxna-laga, Wypna-laga, & Dene-laga, id est, lex Occidentium Saxonum,
Lex Merciorum, & Lex Danorum. *Spelman. Glossar. pag. 445. in vocab. Lex Anglorum.*

(2) *Several punishments or forfeitures for the same crime, as one several here then living Nations. The former was the English mans, the other the Danes: (12 Ores, I finde it guessed.)* Vid. Glossar: ad Lambard. Archæon. p. ult. Selden of Tithes, cap. 8 sect. 10. Spelman. Gloss. pag. 421. & Fœdus Edvardi & Guth. a. p. ad Lamb. Arch. c. 3 & 6 p. 42. *And compare with them Spelm. Gloss. in vocab. Englisheria, p. 231.*

(3) Post Aluredum suas promittit leges Edvardus senior, Æthelstanus, Edmundus, Edgarus, Æthelredus Saxones, & Canus Danus, generales plerumque singulas quoad prohibitionis Canonem, sed in irrogandis multis Danos respicientes juxta consuetudinem Danicam (quam Lasse vocant) Anglos juxta Anglicam; & Mercios interdum juxta Mercianam. Nolut vero Rex Edvardus Confessor in suo regno triplicem hanc justitiæ lancem, sed recensens denud Anglorum, Danorum, & Merciorum leges, suam dedit parem omnibus, & Communem, quæ a Re, Lex Communis; ab Authore, Lex Sancti Edvardi nuncupata est. Ranalph. Cestrensis: Ex tribus his legibus (inquit) Sandm Edwardi fecerunt unam legem Communem edidit, quæ Leges Edvardi usque hodie vocantur. *Spelman Gloss pag. 436 in vocab. Lex Anglorum. Though Geivane of Tibu refer the work to a little after, as done by the Conqueror. Porro liber de quo quæris fignit Regis individuum est comes; (that is, Dornus-Dei Becket:) Hujus autem institutionis causam ab Henrico quondam Wintoniensi Episcopo (in to the Conquerors daughter) sic accipi. Cum insignis Angliæ subactor Rex Wilhelmus, ejusdem Pontificis sanguine propinquus ulceriores Insular fines suos subjugasset imperio, & rebellum mentis terribilium perdomuisset exemplis, Ne libera de cætero d. recur erroris facultas, decrevit subjectioni sibi populum juri seipso legibusque subicere. Propositis igitur legibus Anglicanis secundum tripartitam earum distinctionem, hoc est, Mechen-lage, Dene-lage, West-Sexen-lage, quidam reprobarunt, quosdam autem reprobans, transmarinas Neustriæ leges, quæ ad regni pacem tuendam efficacissimè valebantur, adjecit. *Glossar. ad Lambard. Arch. p. 2. g. in vocab. Ius Danorum. Agreemnt in substance for the Original, Deviation, and composition: of these Laws, tho, b the circumstances, a little vary**

(4) Sed cum omnia percontabamur, à præfato viro excelsio (Triboniano) surgesum est, duo penè millia Librorum esse conscripta & plusquam trecentis decem millia versuum à Veteribus missa, quæ necesse esset omnia & legere, & pericrurari, & ex his, si quid optimum fuisset, eligere. De Confirmar. D'gest. in Princ.

(5) Erat enim mirabile Romanam Sanctionem ab urbe condita usque ad nostri Imperii tempora quæ penè in mille & quadringentos annos concurrunt — in unam reducere consonantiam, ut nihil neque contrarium, neque idem, neque simile in ea inveniretur, & ne geminæ leges pro rebus singulis præfixæ usquam apparerent. *Itid.*

years a laying together, sifted out some little for his use, that greed with the Genius of his time and affairs, calling the Collection, his *New Digests* or *Pandects*, a general Receipt, or *All-receiving composition*; And as was intended, (and in part performed) here at the purging of the Canon-Law in the time of Henry the eighth, (upon the striking of the Pope, the Head,) where it seemed good to the then wisdom of the state to limit by the prudent fishermen in the Gospel, who collected and saved the good into vessels, onely they cast the bad away: Or as lastly law-makers have almost a law to themselves, to cull out no more then needs they must for rejection, the weeds and refuse; reserving all the good slips, and picking their polie as near as they can of new flowers growing on old stocks formerly planted, and hitherto preserved; so was done here. Our *English Justinian* (Edward) made his *new Digests* (the Common-Law) out of those as it were *Prætorian Edicts*, *Senatus consulta*, *Decreta Sapientum*, &c. of British, English, Saxon, and Danish pieces which had been before, and was easier to order then to new make, and usurping to himself the power of a father, having digested it into his new forme, called the product his new Common-Law. Whence or from how far came those pieces he thus made use of, would I beleeve prove a very hard question and not to be satisfied fully, unless we could recover sundry things utterly lost, *Caput inter nubila condit*, as he said of that river, their original is far among the clouds, and not to be revealed to us in any degree but from the things of *Mulmutius*, *Dunwallo*, *Qu. Martia* and such other as being thought of nowhere else in the world but here, are yet with us wrapped up under very hard names. Yet for an *Essay*, and because it hath not been attempted purposely by any, for varieties sake, Take as followeth,

First, for granted, that, as before, the Confessour was but—*Anglicarum legum legitimus restitutor*, as (1) an old book stiles him, the restorer, not the contriver of them; and a little more, that he had them from his Grandfather
Edgar;

(1) Gemeticens.
lib. 6. cap. 91

(1) Ex illo die
(from the fourth
of the Conquerors
Reign) multa au-
thoritate vene-
rate, & per uni-
versum regnum
corroborata &
observata sunt
præ cæteris pa-
træ legibus leges
Edwardi Regis
Sancti, quæ prius
inventæ & con-
stitutæ fuerunt
tempore Regis
Edgari; Verum
post mortem ipsi-
us diu iisse sunt
annis circiter 68.
&c. — Sed
postquam Rex
Edwardus venit
ad Regnum, Con-
silio Baronum
Angliæ legem 68
annis sopitam
excitavit, excita-
tam reparavit,
reparatam deco-
ravit, decoratam
confirmavit; Con-
firmata vero vo-
cata est Lex Re-
gis Edwardi, non
quod ipse primus
adinventæ sit eam, sed cum prætermissa fuisset, & oblivioni penitus dedita à diebus avi sui Regis Ed-
gari, qui 17 annos regnavit, & qui primus ejus inventor dicitur, usque ad sua tempora, videlicet
prædictum est 68 annos post dies ipsius Edgari, ipse Edwardus, quia iusta erat, & honesta, im-
punda abyssu extraxit eam, & renovavit, & ut suam observandam contradidit *Lex Edwardi R. in
Lex Noværomæ, apud Lambard. Archaion, p. 129. & vid. Chron. Verulst. Ecclesie Lichfelden. 16. p. 156
& apud Selden. ad Eadmer. Hist. p. 171.*

(2) The Evidence of things speaks thus much to all that are acquainted with the affairs of those times.

(3) Page 56.

(4) Et cum totam insulam omnino subjugasset, fecit sibi diadema ex auto, insulamque in prin-
cipium statum reduxit. Hic leges quæ Mulmutinus dicebantur inter Britones statuit, quæ usque ad hæc tempo-
ra inter Anglos celebrantur. Statuit si quidem inter cætera, quæ multo tempore post, E. Gildas scripsit,
ut Templum Deorum & Civitates talem dignitatem haberent, ut quicumque fugitivus sive Reus ad
conferret, cum venia coram inimico suo abiret. Statuit etiam ut via quæ ad prædicta templum
& civitates ducebant, Nec non & aratra Colonorum eadem lege confirmarentur. In diebus temporis
ejus latronum macrones cessabant, raptorum sevitia obturbantur, nec erat usquam qui violentiam
alicui ingereret. — In urbe Trinovanto prope templum Concordiæ sepultus, quod ipse ad con-
firmationem legum construxerat. *Galsfrid. Norm. Hist. Reg. Brit. lib. 2. cap. 17.*

(1) Edgar, from whose time they having been laid asleep (for
68. years) and buried as it were under the spoiles of war, long
silenced by the Danish tumults, He, by the advise of his Eng-
lish Barons, revived, awakened, quickned, and gave new life
and vigour to their dull and fainting power, and from the as-
sistance of a friend, Guardian or protector got himself the reputa-
tion of an Author, or first Father, setting them towards the
state they have in some measure continued in ever since. But
we begin not then: He (2) this Edgar, had them ques-
tioned from his most noble Antecessor the pious, valiant, and
wise Alfred, who what he did was remembered (3) before
from Ina, Offa, Ethelbert, &c. to whose tendries he added
what seemed fit of the Legislatives of West-Saxony: beyond
which, and the farthest our inquiries go, and there they settle
must be the King *Mulmutinus*, and the Queen *Mariæ*.
These coyned what had after many following inscrip-
tions, and stamping for currant Law, what had been hitherto
but prevailing reason, or arbitrary opinion, made that first
draught whereof we have now any remainder extant, and
that I beleve with many alterations and Re-Reformation
hath continued topical and national to us ever since to the
very day. Seemeth this a strange thing? I invented it not.
Good authority hath led or misled me; take account thereof
from of each distinctly

First, for *Mulmutinus*, Geffry of (4) *Monmouth* dis-
covers of him, *That he was one of the first, that having sub-*

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dued the whole nation, rendred himself glorious by the lustre of a golden Crown, and made certain Laws, from him called the Mulmutian, which are preserved, (and the Authour lived since the Conquest, in some favour with Robert Duke of Gloucester, King Henrie's son) among the English to this day. Gildas the Wise translated them into Latine along time after they were written; a part was; That Temples and cities should have priviledge of Sanctuary, and so the high-ways leading to them, and the plough, &c. And having reaped much peace, the fruit of his diligence, he was buried in London neer the Temple of Love, quod ipse ad confirmationem legum construxerat. The late (1) Dr. White of Basingstoke, his credit is engaged for much the same, adding, that what Gildas translated into Latine, Alfred did into English to be a rule here, (of whose borrowing from times past we spake before :) and (2) Ponticus Virvannicus (living too on this side the Conquest,) engages they were observed till his days.

sermonem postea Rex Alfhredus convertit, adeò ut diu eandem etiam inter Anglos diligenter observatas fuisse constet. Quarum adhuc se è capita memorantur hæc, Vi Decorum templa, &c. Richardus Vitus Bassistachii, Hystor. lib. 3. p. 186.

(1) Hic igitur (Dunwallo) est qui primus, &c. Et qui leges patrie quæ Mulmutine dicebantur, instituit inter Britones, quæ usque ad hoc tempus celebrantur inter Anglos, (so then from the Britones to the English they came) Urbes, Tempa fecit, ut qui ad illa fugeret, etiam coram inimico abiret, & viz tunc essent simili modo, quæ ad Tempa rectè ibant, & ad aratra col norum : Postea mortuus est in urbe Trinovantum sepultus juxta templum Concordiæ. Britan. Hystor. lib. 2. in fine.

Thus for the man : Now for the Noble and Masculine Queen Martia, the Loyal wife first, and after learned widow of King Gunteline, or Guiteline, (Remember both He and she lived before either the Conquest, Christianity (here) or Christs incarnation; Mulmutius under the second Monarchy of the Persians about 430. before Christ : and this Qu. Martia soon after :) she was (saith the same (3) Geffry) both noble and well learned in the Arts : Among other remarkable things she did, she invented that Law the Britains used under the name of Marcian, (and from her no doubt might the Province of Mercia take name, a large tract of Land

legem quam Britones Martianam appellaverunt. Hanc etiam Rex Aluredus inter cæteras transul- la, & Saxonica lingua Pa March-ti-lege vocavit. lib. 3. cap. 13.

reach-

(1) Mulmutius Dunwallo Rex — aurea Corona primus usus est, & salutare leges quæ Mulmutie dicebantur instituit. Hæc in Latinum transiens Ollas, & in Anglicanum

(3) Erat ei (Guitelino) Nobilis mulier Marcia nomine, omnibus artibus erudita. Hæc inter multa & inaudita, quæ proprio ingenio pepererat, invenit

reaching from *Lincolnsbiere* to the heart of *England* as now and formerly known by this name, as all know that are acquainted at that distance :) which *King Alfred* amongst other translated, and called *Pa Marchitic lage*, as the prime of *Geffry* hath, but the correcting (1) Manuscript more fully, *Merchenelage*, or *Martian Law*: and (2) *Pont. Virum*, (3) *Matth. Westminster*, and (4) *Dr. White* come in all so here with their subsidiary assents and confirmations.

(1) In the public Library of Oxford, in 4 H. 7. Art.

(2) *Hist. Brit.* 1 an. l. 3.

(3) *Flor. Hist.* 21 4 cap. 1.

(4) — *Leges optimas à se nominatas, & diutissime postea à Britannis observatas instituit, quas idem Rex Alfhredus sermone donavit Anglico, ut ante de legibus Mulmu is demonstravimus* *Vol. lib. 3. pag. 199.*

(5) *Chron. ad an. ante nat. Chr.* 442. & ad an. 156

(6) *Hist. Angl.* lib. 1 pa. 21, 22.

(7) Occurrit in Historiis mentio legis Molmutianæ & legis Merchie, aliis Martiane. Illam à Molmutio Rege Britonum quem floruisse asserunt anno nondum elucensit gratiæ, 430. Hanc à Regina Mariana (Lelando Martia Proba,) Guentelini Regis viduæ, dum infantis filii regnum tueretur, ferunt conditam, anno ante Nat. Chr. 150. Has duas leges (inquit Cestrensis Monachus, lib. 1 cap. 10.)

Gildas Historicus transfudit de Britannico in Latinum: & Rex Aluredus postmodum de Latino in Saxonium, quæ Marchene-laga dicebantur. Ipse quoque Aluredus legem Anglicè conscripsit superadjecit, quæ West-Saxene-laga vocabatur. Tandem Danis in hac terra dominantibus tertia la emanavit quæ Dane-laga dicebatur. Ex his tribus legibus Sanctus Edwardus tertius Communem edidit, quæ leges Edwardi utique hodie vocantur. *Spelman, Glossar. pa. 441. in Vocab. Lex M.*

6107M70.

William of Malmesbury, (5) *John Stow*, and (6) *Poly Virgil*, have the same, or much after the same, And so very like all would take up error upon trust one after another; But the true pedigree of the Common-Law may, from beyond this (7) *Edward*, derive it self (in some parts at least) thrice as far with shew and probability. So like is that I say else where, *There may be of Laws a Climatitcal fitness; They thrive best under such an aspect, and may hardly be pruned out: We have Native* some things, and these Connatural, with other, whence they continue the same upon endeavour of removal, and still sprout out again to a kind of immortality. This by the way: Now return.

Whether these things be of certainty enough or not, for the derivation of parts thus far, sure enough what is generally received for the whole, that the Common-Law, as Common-fathers it self on this King and *S. Edward*, as before; He made of severals this one intire Body, wherever he had his pieces; And so in this if we have it, we have not onely Law, but to (create sure right in Temporals) *Secular Law*, *Common Law*, this our settled and long continued all-ruling, all-

disposing

disposing Sovereign *Common Law*, and this in the infancy, life, vigour, and most powerful strength, and chief ruling, *Raigning* power thereof; and all this for what many take to be no other then some tyrannical imposition of some latter statute; yes so indeed, we have the morning beames of this *Sovereign light* to quicken to best and strongest most assured Right, *This Right of Tythes*; Let more or as much be shewed for almost any thing in this Kingdom or Commonwealth.

The highest other titles pretend to, or shelter themselves under, is but under the Conquerour; the most goe not so far, and they are thought to ayme at a very great distance that can but look thitherward; Infomuch that it became (1) a doubt long since whether any Plea founded of right beyond, were to be hearkned to? and though the truth seems, it was, and many enjoyed on this side, what they had on the other, and had not forfeited by stubborn opposition; yet an excellent Scholar (*the Aristotle of our Nation*), and a (2) professed Lawyer, seems to give his opinion to the contrary, *That save Church-lands, and those in Kent, all else had their rights drowned in that deluge, and save what was saved by mercy, the rest then perished*: But now behold here not onely a present and ancient title, but founded in the Common Law, and so long since as makes it to have overlived clearly that bloody battel; Planted there in words at length, by the composer himself of that Law, and so fully too as few things else are, and so by consequent, from the very beginning has a fairer, farther, deeper, and more spreading radiation in the inside and body thereof, (as 'twere clasping in almost to another hemisphere,) then most other lands, tenements, hereditaments, &c. can pretend to. (3) *A tempore coronationis Regis H. patris Regis E.* was long since a good Plea, From the Coronation of Henry the third. And in (4) Henry the third's time, from his grandfather: But here is that overlookes those clearly, double and treble, From the Conquerour and before. What can, if this cannot, settle a thing by Law? to have its title thus written by the Founder Himself, in cleare and evident Characters, even in the infancy

(1) *Vid. Seld. of Tythes. Review of Chap 8.*

(2) Chancell. Bacon. *Of the use of the Law*, pa. 23. And see also the *Preface to Hen. 1. Laws*, late set forth by Sir Roger Twissden, pa. 155.

(3) *Flet 4. 5. 14*

(4) *Bracton fol. 373.*

cy and the very face of the Common Law.

And here then before we go any farther, let us a little stand stil, and veiw the way we have gone, & what we have gained as 'twere in another world, before & beyond the Norman turn. Sure a Right; a firme Right: a legal, undoubted, publike, *Civil Right*; as good as any had, as good as any could have, what grant and assurance could make over, and that publike and strongest. What is that we own any thing by but agree-

(1) F. de Legibus
Senatusque-L.
Nam & Demost.
henes.

ment? publike convention! *πῶς δὲ συνθήκη Κοινῇ*, as (1) *Mar-
cian* the Civillian spake from *Demosthenes* the Orator! which is that alone parts intercommoners, and is the bottome every ones Own rests upon: Now and this stands as full under, as powerfully and vigorously supports these thus apportioned Rights, as any other separate parcels whatsoever, we have made it appear so in those days. I look upon the Common Law in a twofold state, of growth, and perfection. 1. As an Embrio preparing to some thing, in rude and imperfect pieces. 2. As a child, like to be a man, formed to a being, and of some present power, and abilities. In each of which we could expect no more to appear for tythes then does; for whether we regard those native and as it were connatural genuine Laws of our Country as having distinct force, or as after amassed together into one community; the Several parts, made after into the Common Law, or the Common Law made out of those several parts, still, in All, tythes had a clear full mention and grant, And this to the Baptisme of *John*, from the beginning of Any Baptisme in this Nation. We have donation, wee have confirmation; wee have Law, we have penalty; we have Thou shalt pay, or, thou shalt be punished if thou do not pay: King *Etheldreds* Law, King *Elfwolds* law, King *Offaes* Law, King *Ethelwolpfs* Law, and also the noble *Alureds*, the most glorious Founder of our state, and government. King *Edmonds* Law, King *Ethelstanes* Law, K. *Edgars*, *Knotts*, the Confessors, and whose not beside the Parliament at *Enham*, & other Parliaments, Princes, Peers, People, Lords, Synods, Senates, What not? and all from as undoubted monuments of truth and assurance, as any the times do afford: He that will doubt these

these may as well doubt any thing : whether those men were ? whether these Princes raigned ? whether there were an Hepararchy, and the wrangling, wasting, consuming parts did at last coalesce into a mutually preserving Monarchy ? We have but credit of story and record for these, and so for them, and indeed for one part, as well as another.

CHAP. XVII.



OME we next on this side the bloody battel, and Sanguelac conveys us over to no less assurance or clearness of strength on this side that strangely successful invasion. Non-revocation is first assured : for who ever heard of such a prevailing vote as this since the Conquerors dayes, quickned to life and power, that no tythes should be paid ; Then for positive confirmations we have many : Ever and anon some new sinews of strength having been added to those were before, and repeated assurances of them comming in so thick and plentifully that they had need for their multitude to be sorted into parcels to avoid confusion.

1. And whereas of K. Edwards Laws Tythes were a part, as but now, our first search would be therefore, what notice and allowance is of Them, and Tythes in Them.

2. Next when and how the Consistory was erected, with its lawful powers, the proper scan where these dues had motion and translation both as to stating their right and helping their Recovery.

3. What were the Collateral impressions of state in this interval, chiefly since the beginning of the printed statutes ; as in *Magna Charta*, *Articuli Cleri*, *Circumspecte agatis*, &c. to the Petition of Right.

4. What is else abroad of Private stamp, but Publike allowance, as among the great Lawyers, *Cooke*, *Fleta*, *Bracton*, *S. German*, *Natura Brevium*, Book of Entrys, &c. On

The Civill Right

each of which heads is like to be found at least something and all hoped will be abundantly enough. In any whereof yet we shall not so much tie ourselves to follow our method as our business, rather chusing to let our matter lead us, then we forcing it; and always esteeming our method such a line of our own making, as that the compass thereof we may at any time without offence upon occasion transgresse.

First then to *King Edwards Laws*, renewed, repeated, confirmed, and sworn as they were, (a good part of the accompt that is of those are very ancient being spent in the mention of them,) and some wonder it is to see and consider for some Ages how peoples hearts were not so much bent towards, as set upon, and wedded to them. Fickle men! that use to love and hate in a breath; with no more constancy then the winde blowes from such a set point of the Compass, Now for this, and Then for that; Yet such was their Immutable and Immortal love to their *Avita Consuetudines*, as they called them, that they would not admit of any divorce from them; the sword of a Conquerour could not terrifie from their embraces, and any restraint for a time did but quicken their appetite & awaken & inrage their thirst to call for them so much the more earnestly after, & indeed undeniably. It was harder to conquer These then the whole Nation besides: The peoples hearts were soon quieted or subdued by one great Battail and a few other: But their affection to these was such, that ever and anon they were up in bloody Insurrections; They would not be denyed their *Laws* upon peril of their *lives*, and still whatsoever bonds of agreement were made, none would hold; whatsoever peace was agreed on, none would last and be firm, unless These *King Edwards Laws* were the soder and braces as it were to keep all from falling back again to factions and fractions. So in *K. Williams* time, so in *Hen. 1.* & *Hen. 2.* So in *K. Johns*, so in others, till they were planted in the Coronation Oath, and there I believe lately they were in the last that was taken.

See of *K. William* first, whose *Laws* bear this title:

The

The (1) Laws of good K.

Edward which William the Bastard afterward confirmed.

(2) The first Chap. After the Conquest of England, the said William in the 4 year of his reign, by the advice of his Barons, caused through all the shires of England, the Nobles and other the (3) Wise-men and Lawyers of the Land to be summoned, that of them He might know what their Laws & Customs were: These being met, twelve of every shire; and having first taken their Oaths to deal sincerely, not turning to the right hand or to the left, adding nothing, detracting nothing, changing nothing, began with the Church: *Quoniam per eam Rex & Regnum solidum, subsistendi habent fundamentum*; Because this was the Basis and firm settle whereon all the Rest was seated, and her Laws and Liberties were (they say) as followeth;

2. Let every Clerke and Scholar, and their possessions wheresoever, have the peace of God and the Church: And so on to the eighth Chapter; for every tenth sheaf, tenth sole, tenth fleece, &c. as before, which is the (5) particular Law we seek for here. That which might occasion this strict Survey, may have been, when he saw what was, to superinduce or conjoyn his Norway orders; (6) As well because they were his, and he was willing to govern by his Own, as because they were better and honest, as he pretended; But chiefly for that their admission (7) would have removed one rub which lay in his way, and hindered the evenness of his path to the Crown by succession, which was his unfitness thereto by reason of his illegitimation; which,

(1) *Leges boni Regis Edovardi, quas Gulielmus Barchardus postea confirmavit.*

(2) Post acquisitionem Angliæ p̄fectus Rex Angliæ Gulielmus, quarto anno regni sui, Consilio Baronum suorum fecit summoniri per universos Angliæ Consulatus Anglos nobiles, sapientes, & lege sua eruditos, ut eorum leges, & jura, & consuetudines audiret. Electi igitur de singulis totius patriæ Comitatibus viri duodecim, jurejurando coram Rege primū confirmaverunt, ut quoad posset recto tramite incedentes, nec ad dextram nec ad sinistram divergentes, legum suarū & consuetudinū sancta pateracerent, nihil p̄termittentes, nihil addentes, nihil p̄varicando mutantes. A Legibus igitur sanctæ matris Ecclesiæ sumentes exordium, quoniam per eam Rex & Regnum solidum habent subsistendi fundamentum, leges, libertates, & paces ipsius concionantur, dicentes.

(3) *Omnis Clericus, &c. Lambard. Arch. p. 138. Spelman. Cancell. p. 619.*

(4) *See M. Seldens Review of Chas. 8 Of Tythes, p. 981.*

(5) *And the same tith is alſo of the same body, but under another head, as if the whole composition were Glanvils, in Hoveden. Annual part. post p. 600.*

(6) *Proferebat enim quod antecessor ejus, & omnium Baronum fere Normannorum, Norwegienſes exiſtiſſent, & quod de Norveia olim veniſſent. Et hac authoritate leges eorum cum profundiores & honeſtiores omnibus aliis eſſent, p̄ter ceteris regni ſui legibus aſſerebat ſe debere ſequi, & obſervare. Lambard. ibi ſupra p. 149. & Vid. Spelman. Glosſar. p. 436. & Chron. Lichfeld. apud Lambard. p. 158.*

(7) *Selden. ib. p. 484.*

as Laws were here under the Church, scarce left him in succeeding condition (to his Cousen *Edward*, for he was bred not meerly by Conquest,) whereas the Northern was in this regard more pliable and favourable. But when

(1) Quo audito mox universi compatriotæ Regni qui leges edixerant, iustes effecti, unanimiter deprecati sunt, quatenus permetteret sibi leges proprias, & consuetudines antiquas habere in quibus vixerant patres eorum, & ipsi in eis nati & nutriti sunt, quia durum valde foret sibi suscipere leges ignotas, & judicare de eis quas nesciebant. Rege vero ad floendum ingrato existente, tandem eum prosequuti sunt deprecantes, quatenus per animam Regis *Edwardi*, qui sibi post diem suum concesserat coronam & regnum, & cujus erant leges, &c. *Lambard. Vbi Supra.*

the people heard hereof, their rage was up presently, their swords in their sides, and spears in their hands beseeching *they might not be ruled by they knew not what*; and when denied, reinforced their bold requests, conjuring him by *S. Edward's soul, who left him the Kingdom*, (as this was a part of his title, glanc'd at before,) and whose the so much

desired Laws were, that he would not force a yoke on them they were not able to bear, and like to gall their necks much the more, because they knew not how neither to move it. This he had in part (2) promised before to the greatest of the Hierarchy of *Canterbury* before they would lay down with their boughs their swords, but soon forgot his words as Conquerours use to do; But howsoever with no remedy, He must yeeld, and did once for all: *Thomas of Cant.* and *Maurice* another Bishop, writing them with their own hands, and so they were taken up, *Dei Deo debita*, with the rest, and they shall be now observed for ever. Such they may be, it is harder to conquer *Lancaster* then Men, and rooted usages having had time to spread like, may contract such a kinde of Connaturality with the place by consent, that though a generation of men may be cut off, These will not. I will not say, There is a Climatical fitness, and in such a place some love to grow; As in other things, There do influences produce and cherish, while being There prospers, being Away languishes, being removed sighs out fainting desires to return, like the Vine that the Elme thrives best, (yea, mutually they cherish each other,) or the plants of *Trinacria*, which when that Island was cut off from *Italy*, (as ours thought from *France*) reclined bravely back to the place from whence they had been taken.

(2) *Vid. Thom. Spot. prout citatur in Glossar. ad Lambard. Arch. pa. 222. in vocab. Terra ex Scripto. & Speed. Hist. lib. 9. cap. 1. fol. 8. in Hist. 1.*

No (live in natur to de and c are r movi us to son, then treys, that there wray place, them restin light fee w tive I so so a scor thy, not ? nity I trucu learn the p Engl Abbo Coun Thel Gove reme The ford what No

No (1) poisoned thing, they say, will live in Ireland: Creatures, their very nature is (2) troubled, and they like to degenerate, when they change soil and climate: Some Northern Beasts are reported to alter (in time) removing to the South, and when from us to any other Countrey, against reason, yet more: As things, may not then Laws naturally love some Countreys, desire to be there, prosper in that Region best, and thitherward therefore recline being separated? bewraying a kinde of sympathy with the place, by that the place seems to want them, and they desire and make to it, resting and having a strange kinde of complacency and delight (mutually) in that approximation! Many things we see we can give no reason of: but we Do see and know Native Laws settle (as in love) towards some places, Ours also so passionately called for Here, as to a despite of opposition, a scorn of denial; May there not then be a kinde of sympathy, and Connaturality of Them with Us, we understand not?

Well: this formal Concession was upon this importunity howsoever made, but how kept? M. Foxe (3) says the truculent soldier feared not to perjure himself: (whence we learn, he had sworn:) Upon which endeavour of revocation, the people were soon up again (4) under Edgar Etheling, Englands Dearling as they called him, Frederick The stout Abbot of S. Albanes, and Aldred Bp of York being their Chief Councillours, Edwin and Morcar their Chief Generals. These would not bear their forced change of Laws; though Governours they stuck not so much at, neither was there any remedy but gratifie their discontents with a re-Concession. The King enters parley with them at Berkehamsted in Hertfordshire, where loth to hazard by the chance of an houre, what he had got not without the expence of blood, treasure, and

(1) Nullum ibi reptile videri solet, nullus vivere serpens valeat. Nam sæpe illud de Britannia allati serpentes, mox ut proxima terre navigio, odore aëris illius adacti fuerint, intereunt. Quin potius omnia penèque de eadem insula sunt, contra venenum valent. Denique videmus, quibusdam à serpente percussis, rasa folia codicum, qui de Hybernia fuerunt, & ipsam rasuram aquæ immixtam, ac potui datam, talibus procius totam vim veneni grassantis, totum inflati corporis absumpsisse ac sedasse tumorem. Bedæ. Ecclesiæ Hist. lib. 1. cap. 1.

(2) The Indian Ounces, What be they but ex-trail from the Cats of Europe? Spanish dogs, in New Spain, in the second Litter do they not become Wolves? Good Melons transplanted in a base and barren ground, soon quickly ordinary members. So there in (Cambray) the lackals may be of the dogs of Europe, by disorder of air, and soil varying in spe is seen that they were formerly. Herb. Trav. p. 124 in Carmania.

(3) Martyrol in the Life of W. H. 1. p. 171.

(4) Speeds Hist. lib. 9. cap. 2. fol. 28. Selden ad Ead. Max. vol. 1. p. 194.

and so long continued industry; He condescends to hearke as *Rehoboam* should, to his wise Councellour (the Archbishop of *Canterbury*) to yeeld to grant what 'twas dangerous to deny, and to be pliable for once to those must be subjects for ever: *Non tam libenter itaque quam sapienter*

(1) *Theo. Spot. Vbi*
du.

(1) as was said of him in another case, not so much willingly as wisely he made Concession, and being also of carriage fair, and of speech courteous, he so won upon the Abbot *Fretherick*, and all that were with him, that they were again content to put their neck into his yoake, he might be the gentle one they liked of *K. Edwards* making. So said, so done: an agreement was thus made which ratified by Oath and vowed upon the reliques of *S. Albane*, they were satisfied, and every one went to his own home. That this were not the onely time or course of affairs that brought about the establishment of these loved decretals: Elsewhere also they were put into (2) *K. Williams* Code, who

(2) Hoc quoque precipimus ut omnes habeant & teneant leges Edwardi Regis in omnibus rebus, adausis hiis quas Constitutum ad utilitatem Anglorum. *La. bard. Arch. pa. 172. l. 63. Selden. ad Edmer. not. pag. 192.*

(3) *Edmer. Hister. Nov. lib. 3. pag. 55.*

(4) Promisit emendationem legum, quibus oppressa fuerat Anglia tempore patris sui & fratris nuper defunctis:—Adhuc Clero respondente et magnatibus cunctis: quod si animo volente ipsis vellet concedere & Charta sua communire illas libertates & Consuetudines antiquas, quæ floruerunt in Regno tempore sancti Regis Edwardi, in ipsum consentirent & in Regem unanimiter consecrarent. Henrico autem hoc libenter annuente, & se id iacturum cum juramento affirmante, consecratus est in Regem apud Westmonasterium, &c. *Mait. Paris. ad an. 1100. p. 51.*

no doubt) they would stick to him against his elder Brother

Robert

willed them to be strictly kept by all, & onely some additions in favour of the English as in the Red Book of the Exchequer, last published. Next him was *William 2.* of whom we have little account, but very like his traitor nature would put on for a return of fierce Norway usages. More then like he did for at the coming in of his Brother *Henry*, was fain (3) to stroak the people with a promise to release their heavy burdens, and the all things introduced contrary to *K. Edwards* Laws, should be removed, with a Rescission of them in their full force and virtue. (4) A Monk of *S. Albane* who was kelt to know, tells us: *He sooths the headly people, desiring he might be their Governor, and all hard Laws should be amended: They specifie, that if they might be S. Edwards Laws, and he would allow them by his Charter* (after made out into the great Charter

Robert, now in the holy Wars at a distance. With all his heart ; for he must, or no Crown : So he swore them presently, and was not after worse then his word : for he soon directed his Letter to the Sheriffe of every Shire, acknowledging his Election, and confessing oppressions past, and promising relaxation to come, grants the Church her liberties, &c. and that all ill customes should be amended, &c. And coming to particulars, that all past murders should be pardoned, and future tried by K. Edwards Law, He after reaches in the whole : (1) The Law of K. Edward I restore you, saith he, with all amendments made by my Father with the consent of his Barons: which is the more like to be true, because besides this private Authour, there is agreement of the publike Tables in two Copies (with some small variation,) in (2) the Books of the Exchequer, (3) the title of whose second Chapter is, *De Confirmatione Legum Edwardi Regis*, as if that were the onely businessse. Aiterwards Robert came home, and they parlying of the great business (4) at Northampton, fearing the peoples revolt, he knew no better means to retain them, then by pleasing them with sugared words, telling them, *His Brother was a Military man, He addicted to Peace: His Brother a new-comer, Himself known to them: The stranger was like to prove truculent, as arriving to them with his hands bloudy from Syria, but He had granted them King Edwards Law, had sworn it them, had kept it them; It was his joy to remember the day when that firm and pleasing bond of friendship was contracted between them first, which also he wish't everlasting: And if they list to desire any thing more in the same businessse, they need but ask and have; and thus were they enchanted to be his, almost against Justice: Parva leves animos capiunt; Good words go far with the multitude.*

At King Stephens coming to the Crown, we finde not much, but (5) he swore the Liberties of the Church, and gave Charter of them, &c. (6) He promised to reform the over-hard Laws of his Predecessors, and to mollifie extreams under his Seal and Charter: which words confide-

P

fed,

(1) *Lazam Regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus eam emendavit Consilio Baronum Anglie.* Id. ib.

(2) Late'y published and annexed to Lamb. Arch. p. 175.

(3) lb. Pa 176.

(4) *Matth. Par. ad an. 1106. pa. 59.*

(5) *Id. in vita Stephan. Reg. in prim. pa. 71.*

(6) *Speed Hist. lib. 9. ca 5. sect. 3.*

(1) And Will. Malmesbury speaking of K. Iouls severity, and picking from K. Etheldreds Laws, and eternizing them, whereof before: In quarum Custodia (saith he) etiam nunc tenentur sub nomine Regis Edwardi iunioris, non quod ille statuit sed quod observaverit. *De Gest. Reg. Angl. lib. 2. cap. 11. pa. 75. He lived in thu K. Stephens time.*

(2) Florent. Wigorn. in Glossar. D. H. Spelman pa. 440.

(3) Videri que Hovedenus leges Edwardi Confessoris à Gulielmo emendatas, & ab Henrico secundo denuò restitutas, restituenti attribuit. *Id. pa. ead. col. 2.*

(4) Vid. Hoveden. Annal. part. poster. ad an. 26 Hen. 2. pa. 600.

(5) *Ad. an. 1213. pa. 129, 130.*

(6) This was being strictly taken, Henry the second: but a judicious Conjecturer rather justifies it: as Hen. 1. as if it were, Proavi sui. (Spelm. in Gloss. pa. 436.) which is the more likely, because this was word for word that K. John swore, and is here found remembered and recited; as may be seen in Math. Paris.

red, seem much of the import with the (1) former. But before his reign was out, (2) the Londoners were up, and made earnest request to Mand the Empresse, then, it seems, recovered to some power, and gotten thither, that these Laws of K. Edward might be restored expressly: *quia optime erant, & non patris sui Henrici, quia graves erant*: whereunto she giving an unadvised answer, there rose presently such a storm of mens passions and arms both together, that she was glad, with disgrace enough to leave the Town, without taking so much as her Trunks along with her. In Hen. 2. (her sons) time, R. de Glanvill was made Chief Justice. His Book intituled, *Traictatus de Legibus & Consuetudinibus Anglie tempore Regis Hen. 2. composuit*, has, for reasons I shall alledge hereafter more seasonably, little of Tythes, Nothing of King Edwards laws as that Book is come to us: But (3) to the same Henry as Authour, and the same Glanvill as under him Composer, are ascribed this very Body whereof I speak, and under the same Head given by Ro. Hoveden the Historian; Though he saith yet, I take it, but the (4) Compiler of them.

But now in K. Johns time arose those terrible tempests were like to shake and overwhelm all, the noise whereof was heard all over Christendom; Neither was there any appeasing the storm, or settling toward peace and quietness, but by so far as these Laws had approbation. Math. Paris (5) tells us, *that at the end of some broyles, when the King was absolved at Winchester, he swore upon the holy Gospels that he would defend the Church and Church-men, &c. and revive all good Laws, especially King Edwards, abrogating all that were unjust*: which I take it, was done not long after at S. Albanes, when peace was restored to all, and on behalf of the King commanded, that the Laws of (6) his Grandfather Henry (of him we had but now) should be

obli-

observed, and all hard Lawes repealed throughout *England*: which when after upon displeasure it was endeavoured to be revoked, the Archbishop follows the King to *Nottingham*, and so deals that that unjust purpose was revoked; and after, having found a Copy of *Hen. 1.* Charter (of which before) He takes aside many of the *Peers*, and thus bespeaks them: *Ye may remember what was done at Winchester; How I absolved the King, and he swore to revive and preserve K. Edwards Laws: I have lighted upon a Copy of them; here it is, Hear it read, and let us make our selves happy once for all by a combination that it Shall be observed.* Hereupon he produces the Charter, word for word, the same as from *Hen. 1.* even to the particulars of a double mention and confirmation of *K. Edwards Laws*; and having read it and sworn to it and the Combination together, by the next (1) news we hear of *K. John*, he is like to turn Mahumetan to shift himself of those troubles his inconstancy to these good Laws had wrapped him in. Nor ended the business so: (2) The year following was a great meeting at *Saint Edmundsbury*, to force the King again to make good the liberties and (3) those Laws: soon after *Christmas* the year following, they come boldly enough upon him and demand the observation of them, and performance of his promise; when he craved time to deliberate, and meant but to delay, they smelt it, and assembled a great Host at *Stanford*, and coming after to *Brackley*, where they had a parley, offered a Schedule of their demands, containing the *old Laws* and *Customes of the Land*, and those are (4) after said to be partly out of *K. Henries Charter*, (of which before) and partly out of *K. Edwards Laws still*. So that thus far plain and even way till among the Charters, and in Treaties and Consultations, Acts, Orders, Grants, and Demands, still these were a considerable part, the onely soder to combine the disagreeing parts, of the brittle body Politique; and when the rage and fury of the people was up, nothing was so effectuell as this, like cool water to sprinkle upon their raging fiery passions; Stroak them with a Concession of these, and they were calmed presently. I confess we are

(1) *Id.* pa. 233.

(2) *An.* 1214. *id.* pa. 243.

(3) *They produced the Charter. Con-*
tinebatur autem
Charta quasdam
libertates, &
Leges Regis Ead-
wardi Sancti, Ec-
clesie Anglicane
pariter & Magna-
tibus concessas,
exceptis quibus-
dam libertatibus,
quas idem Rex
de suo adiecit ib.

(4) *Capiula*
quoque legum &
libertatum que
ibi Magni
confirmari que-
rebant, partim in
Charta Regis
Henrici superius
scripta sunt, par-
tim que ex legi-
bus Regis Ead-
wardi aut quibz
excerpta. Id. pa.
244.

yet short of *Hen. 3.* whose was the ratification and renewed allowance onely, not first grant of that our present laws take chief notice of, by the name of *The Great Charter*; But withall it is to be observed, that This was chiefly an extract of Those, and that which *K. John* confirmed by Oath, and his Barons contended for, and would not be denied to have made good in Deed, was but *Hen. 1st*. Of which one that had searched and was like to know, tells us: *Veri*

1. Sir Roger Twissden, in his Preface to the Laws of Will. 1. pag. 157. Cook has the same in his marginal notes on the Charter in his Introduction 3 cha. 1.

(1) *itaque hac (Henrici 1.) dici potest. basis & fundamentum ipsius Magnae Chartae, quae ex parte maxima leges antiquae & Regni Consuetudines continebat, quamque Hen. 3. non confirmavit antequam per milites 12, vel legales homines universumque Comitatus per Sacramentum inquiri fecisset, quae fuerant Libertates in Anglia tempore Henrici avi sui.*

So the Great was but taken out of the other Charters, renewing (with some variation) what they had granted before, and there is urged authority for that derivation, which their comparison and consent will well enough make good. Thus having brought these Laws among the Charters, thorough them, and to the last and Great; They now with ease and pliability enough come along and have a place in the Petition of Right, where That was owned sufficiently, and as many Ratifications as there were intercedent, even Parliamentary, so many must be acknowledged to fall in by the way (at least by implication) Hither: Of that great Law of Tythes I mean, which having so fair and eminent a place in *K. Edwards*, must also have as full and frequent a ratification all along in that bulk of laws so ratified, which justly occasioned this Narrative; And by it we see a part of that strength the Law of Tythes hath on this side the Conquest, even in the Common Law still, by that it was part of it at first, and a very remarkable part of that is taken to have been the foundation and first rise of the beginning of the Common Law, and since hath, as now, been seen, allowed, and approved with it all along, with impetuous rage and violence called for by the people of the land, and they would never be quiet but under this Regiment, or without these beloved orders whereof Tythes were a considerable and

and eminent part. If they had been pressed upon them by those were interessed by profit, or the tyranny of command from above had settled, or kept them upon their weak and declining shoulders, as unwilling as unable to bear, Reason would there should be at least some more colour of struggling to free themselves from the force, and their hands have leave to loose their necks from the yoaik of unjust imposition; But sith they desired them, bespake them, contended for them, and would not be denied, but fought that they might pluck and keep that Burden upon themselves; what can be more equall then that. as their own act binde themselves, so their inheritours and successours also, and that whether to gain or to losse, yea, to losse as well as to gain, they stand to them, and every good man with his own whether Act or Right, sit down and Rest satisfied and very well contented?

Most things indeed finde some opposition; few are so happy to escape altogether free, and some Persons may perhaps think good to doubt of All here: As, whether these references dispersed and represented as before, point to King Edwards Laws, or some other? which latter If, All hitheeto would seem beside the Cushion. But in answer would be considered, 1. That no such thing appears as mis-application, neither are other with much probability suborned in their place. 2. The title, the old title, and that from as far as Roger Hovedens time, speaks for them, and plain, *Ha sunt leges boni Regis Edouardi, &c.* 3. Divers passages alledged, glanced at, and extant beside can hardly be understood but to contribute the strength of their Testimony this way. 4. To this also the likeliest guides have led us: M. Lambard, in his Edition; M. (1) Selden, in his Allegations; (2) D. Tildesley, (3) Sir Henry Spelman, (4) Sir Tho. Ridley, and of late (5) D. Wheeler of Cambridge. Could all have been mistaken? Were they all in the wrong? Shall we rake in a point of doubt the whole world of Learned men to be nothing else but a flock of sheep, wandering from the truth themselves, and leading others unto errour that follow them? Take what we finde: They are generally reputed *His*, clearly styled *His*, have continued to be reputed and styled so long

enough,

(1) *Hist. of Tythes*
lib 8. pa 224

(2) *Animadvers.*
on that Chap. pa.

164.

(3) *Concil. Tom. 1.*
p. 620. and of
Tythes, chap. 17.

pa. 131.
(4) *View of the*
Eccles. Laws, Para
3 chap 2. sect 1.

pa 111.
(5) *In his late Es*
dition of M. Lam
bards Archæon.
Anno 1644.

enough, and nought appears clear to the contrary; and Why Then may we not Therefore embrace them for *His*, and *Genevieve*, crediting the voice of the world? Which how, and why taken into the Coronation Oath, we may by these things, as they were, in part also conjecture. But of this hereafter, or as shall be occasion: In the mean time, of them, and of this Branch of Tythes in them, Thus much.

CHAP. XVIII.



TEP we next into the Church, but by degrees, and taking in some such things by the way, as could not have found so fitting place elsewhere: As namely,

1. Remembred be it, that Tythes were payed under the Conquerour: They were so; For as well (1) *M. Selden* hath it in divers particulars from the most authentique account of this Lands Survey represented in *Domus-Dei* Book, (others agreeing, and enlarging his proof:) As (2) *Matth. Paris* consents, in thus relating a dismal Tragedy acted under *William* the first, about forcing Priests from their wives; *They*, saith hee, (the Priests) grew scandalous, the people rose up against them, Lay-men fell aboard with the Sacraments, Any would administer Baptism, and then went Tythes to wrack: *Decimus enim Presbyteris Debitas igne cremant*: They acknowledged their Dueness, but of malice they set them on fire, loth the scandalous married Presbyter should have any good by them, and yet afraid it seems to meddle with them for common profane use; And they that did so, in the next words we find treading the Sacrament under their feet.

2. Own, as about this time owned that Law of *K. Edgar*, avowed after by *K. Knoght* or *Knout*, and (3) now renewed by the Norman *Hen. 1.* for rule, penalty, and order for execution: And this here assured from the best means of

(1) Chap. 10. pa. 279 &c.

(2) Ad An. 1074 pa. 8. & vid. Selden. ad Eadmer. Histor. pa. 168.

And for after, see the complaints, (supposing payment) in John of Chartres. De nugis Curial. lib. 7. cap. 21.

(3) L. Hen. 1. ca. 1. among the additionalis to Ad. Lambard: whereof before, pa. 84. & pa. 88.

of TYTHES.

III

information, a double entry thereof in the Exchequer Book, among the fairest testimonies extant of the Land.

3. Adde. not mentioned before, that which resembles a Parliament in the same King (*Hen. 1.*) days, assembled at *Westminster* about the beginning of his Reign; where, for stating divers things then raised in doubt, among others was ordered (1) Thus: *Ut decime non nisi Ecclesiis dentur: Let Tythes be paid to none but Churches*; Supposing their Dueness, but limiting to whom they should be paid: They might Not but to the Church, Therefore *There* they Might; else the supposition had been a vanity, and the publick voice said as good as nothing. Darknes seems to be over the meaning, (or what should be the import,) but light may be borrowed from the state of things then about; and I conceive of it and them thus. Then was not onely started, but in a warm Case, the great doubt between the Secular & Regular States, about the due and immediate Receiver of Tythes, (not the Dueness, but the Due receiver,) and the claim parted between two, the Church & the Monastery: The last might have heard (2) Saint *Augustine*, should say, *Decime sunt tributa egentium animarum*, (after (3) taken into the Canon Law,) *Redde ergo Tributa pauperibus, Libamina sacerdotibus*; And the (4) Capitularies, That they were the vows of the Faithful, and the patrimony of the poor: Hence, allowing the Churches claim indisputable, They might There, *In signum universalis Domini*, They doubted whether they might not also be paid in to the Monastery, and that duty of a Reall confession of a Deity be sufficiently discharged in giving to *Themselves, the poor*, that whereby they might as well confess and acknowledge a Divinity and high Providence by, as by giving to the other Church-men? Now how votes the Assembly? *Ut* (5) *Monachi Ecclesias non nisi per Episcopos accipiant*, afterwards, *That none receive what was the Churches, but by the Church*; (and then (6) not to shave so close, that the labouring Minister might be to seek of wherewith to cover his Nakedness; a very con- scionable and reasonable provision!) And here, *Ut decime non nisi Ecclesiis dentur*: That is, Those Tythes that are paid,

(1) Eadmer. Hist. Novorum, lib. 3. pa 68.

(2) Serm. de Temp. 288.

(3) Cant. 16. Qu. 1 cap 66. And as

home in Excerpt. Egberti. Can. 100. much so the same.

(4) Res Ecclesie sunt vota fidelium, patrimonia pauperum. Capitular. Carol lib. 1. ca. 83.

(5) Vid. Gratian. Vbi Sup. ca. 57.

& 59. apud. 6 Neg. sibi datus

(Ecclesias) ita expolient suis

red it bus, ut Presb. teri ibi

servientes, in iis que sibi & Eccle-

sis necessaria sunt, penur an-

puantur. Ead- mer. Vbi Sup.

paid, and openly known to be due, in exclusion of the Monastery (immediatly,) let them be issued forth onely to the Church. Another remote, mediate title they might have, that is, in the Churches Right, bringing them in in the Church-way, but of themselves they may not presume so high to lay any claim. Much more might be said, but this seems enough to enlighten the meaning of a dark Law, and as by all states equally and indifferently made, seeming to be universally binding: For it was not onely a Synod, but (1) a part-secular Assembly: For, besides the Royall Authority, there was also the Peerage; I will not say, the Commons, but *Primates Regni*, which in some sense They may be styled, as the Heads of those they represent. *Adunatum est Concilium*; for more firmness, both states met, and united their Councils to give things the more countenance and strength of universall authority.

But the chief strength of these Dues was in this Internall in the Church, and so properly to our days, and the discussion of them in its own sphere with Church-men onely: For at this time they had gotten such a strength of credit and reputation, as well as power to be trusted with their own matters, and with the things of Religion, (their proper cure,) Tyndale came in, as the support and maintenance, That now, grounding themselves upon the allowance and permission of the State, they might make Canons for themselves, and see them do execution, make orders for their Dues, and send for them in; and that ordinarily they did so, is sufficiently known to all that are acquainted with them, and the then transaction of things in this State. *Do ye not know that the Saints shall judge the earth?* (saith (2) Paul) *And if the world shall be judged by you, are ye unworthy to judge the smallest matters?* *Know ye not that we shall judge the Angels?* how much more the things that pertain to this life! Lower, trifling, perishing things! Can a man be thought fit for *Those*, and not for *These*? Is it like that his discretion, learning, judgement, honesty, and universall integrity and sufficiency, should be an equall match for Heavenly matters, Divine things, Scripture-Oracles, reserved Mysteries, Articles of Faith and Religion,

(1) Anno dominice incarnationis 1102, tertio Regni Henrici gloriosi Regis Anglorum, ipso annuente, celebratum est concilium in Ecclesia S. Petri in occidentali parte juxta Londoniam sita, communi consensu Episcoporum & Abbatum, & Principum totius Regni. In quo præfatus Anselmus, &c. Huic conventui affuerunt, Anselmo Archiepiscopo preterea à Rege, Primates Regni, quareus quicquid ejusdem concilii autoritate decerneretur utique Ordinis concordie cura, & sollicitudine totum servaretur. *Eadmod. Hist. Nov. 123 p. 67.*

(2) 1 Cor. 6. 2, 3.

gion, and yet he be unfit to determine in a few worldly trifles? Heaven is under his hand, and Earth above him! These and such perswasions wrought, it seems, upon the reason of those times, (to have the Ministers of Religion intrusted at least with their own,) and thus much farther and out of the way, that the Temporal Courts were then chiefly ruled by Ecclesiastical advice, Councillours, and Judges; the Council Table, Common Pleas, Chancery, Judges *Itinerant*, and even the Vice-Royes Seat being often filled with those men, whose breeding to letters, successful progresse in them, gravity, piety, and more then presumed honesty, made King and people of all sorts think nothing so well done, as what they would set their hands to, and the government of no affairs so well steered and managed, as what the Teachers of Religion and Men of God, (to whom they had committed the government of their souls,) would condescend to stoop and interpose for the conduct and guidance of; But as to Tythes, sure their Jurisdiction, as things belonging to Religion, was now brought in from the mixt County-Court, and settled among them alone, *Illâ se jactet in aula*, Authority had said so, and given leave; And then, as the Lord of a Mannour having authorised his Steward to keep Court, the Acts passe with his Authority, though by the others Ministry; So though Decrees and Determinations of emergent affairs were agitated by Ecclesiastical persons, and had their sentence and seal by their consent and mediation, yet the Supream and Universal Power having given Commission, the things were authoritatively done, and regularly firmly enough Thence without any usurpation or irregularity, As in the Common Pleas, Seat of Assize or Sessions, where the Kings Substitutes did (who-soever or what-soever) firmly enough by his power in his personal absence. Neither was this any wrong to Any: for so the publick hand gave out Justice, what matter was it, (1) which? So the Throne were established in Righteousness, what matter who the Supporters? So Right were done, which was the *Thing* whereof came the *benefit*, what matter who were the *Ministers* that gave it forth, whether of this sort or that, one or another? Though a fair presumption be still

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(1) Vil. Ridley,
View of the Laws,
par. 3 cap. 2. sect.
2. p. 147.

for him that wears the Gown, and turns the Bible; and generally even Humane affaires are thought and found better stablished, that have their stay by Religion. In fact thus, Here it was so: that Causes Decimal moved in this Sphere of the Supream Powers Ecclesiastical Cognizance and Jurisdiction solely, properly and onely; Neither may we henceforth expect, save in a glance or by reflex, any memory of Regular discussion and determination of them save in this compass: Or, as one Neighbour-Court takes notice of another, the Common Pleas of the Kings Bench, or the Chancery of the Exchequer; So the Secular whether Courts, Acts, Rules, or Decisions, took notice henceforward no otherwise of the duenesse or disposition of Tythes, then by a neighbourly Reflexe, as the Admiralty takes notice of *Englands Common Law*, or the County-Court did of the Bishops Visitation.

Here therefore it may not be unseasonable to give the Originall of that Court, (which after a thousand others, would never have been so fitly called as by that proper name the Lawyers and the Law called it, of (1) *Curia Christianitatis*, or, The Court-Christian, (2) because Secular things (as should have been so) and of humane life being referred to their Regulations elsewhere, where there was blessed Law provided for them, The things (3) of Christ, the affairs of the Church, (4) *Christianitatis jura*, as they were styled, the super-inducements to the Civill state of Religion and Sal-

(1) Glanvill, de legibus Aug. li. 2 cap. 12.

7. 8, 13, 14.

10. 12.

12. 21, 22.

Bradon de Ex-

cept cap 3. sect.

2. cap. 4. sect 2, 3.

7. cap. 10. eccl. 1.

Radulph. de

Hengham sum.

parva, cap 8 pa.

105.

Flet. lib. 5. cap.

5. sect. 50.

cap. 16. sect 16.

cap 28. 10. ca. 30.

1, 2. li. 6 ca. 39.

sect 5 9. ca 44 6.

Stat. de Westm.

2 cap. 5.

Circumspecte Agatur, 13 Ed. 1.

2 cap. 55.

Book of Entries, fol. 488.

Cooks Institut. 2. pa. 487. Doct. & Stud. Dis.

(2) Our Ancestors having the Common-wealth before ordained and set in frame, when they did agree to receive the true and Christian Religion, That which was before and concerned a tern policy which their Apostles, Doctors, and Preachers did allow) they held and kept still with that which they brought in anew. And those things, in keeping whereof they made conscience, they committed to them to be ordered and governed as such things of which they had no skill, and as to men in whom for the holiness of their life and good conscience, they had a great and sure confidence. So these matters be ordered in their Courts, and after the fashion and manner of the Law Civill, &c. Sir Tho. Smythes Common Wealth, Lib. 3. cap. 11. Vid Cook Instit. 2. p. 487. agreeable hereto.

(3) *Curia Christianitatis*, id est, Ecclesia in qua servantur leges Christi: cum tamen in foro Regio ferventur leges mundi. Lyndewood tit. de foro competent. Gloss. Curia.

(4) Agantur itaque primò debita veræ Christianitatis jura, secundò Regis placita, postremò causæ singulorum. L. Hen. 1. cap. 7. in Lambard. pa. 180.

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vation, were here set aside to a select Committee by themselves, who by their rule should judge of Heresie, Schisme, Apostacy, Scandal, &c. comparing spirituall things with spiritual; Neither was the purpose of erection, the naturall Jurisdiction, the lawful bounds, or intended first power as far as I could ever know or learn, meant of any excesse beyond this compass: Men might be irregular, and their courses exorbitant, Themselves wilde, but this their first and intended, allowed path: It may not be amiss therefore, I say, to give the Original of that Court,) its rise, growth, strength, and first power, when and by whom set up, and to what likely purpose: All which, may not be better sought then from the very Patent of Erection, which here therefore, (and because it is some rarity, at least not vulgarly known) from suggestion of good credit, I give and exhibite. The Law of *Circumspecte Agatis* was directed to the (1) Bishop of Norwich, and the old Charter upon Record to the (2) Sheriffe of Herefordshire, yet so as either the power and vertue of each was meant to reach to all, or, *Mutatis mutandis*, severall like Copies were sent: So here to Remy Bishop of Lincoln; but it was the mould of all Ecclesiastical power. The Charter speaks thus:

(1) 13 Edw. 1.
(2) Math. Par.
ad an. 1100 pa.
53. in Hen. 1.

Willielmus Gratia Dei Rex Anglorum, Comitibus, Vicecomitibus, & omnibus Francigenis & Anglis qui in Episcopatu Remigii Episcopi terras habent, Salutem. Sciatis vos omnes, & ceteri mei fideles qui in Anglia manent, quod Episcopales leges quae non bene, nec secundum sanctorum Canonum praecepta usque ad mea tempora in Regno Anglorum fuerunt, communi Concilio, & Consilio Archi-Episcoporum meorum & ceterorum Episcoporum, & Abbatum, & omnium Principum Regni mei, emendandus iudicavi. Propterea mando, & Regia autoritate precipio, ut nullus Episcopus vel Archi-Diaconus de legibus Episcopalibus amplius in Hundretto placita teneant, nec causam qua ad regimen animarum pertinet ad iudicium secularium hominum adducant, sed quicumque secundum Episcopales leges de quacunque causa vel culpa interpellatus fuerit, ad locum quem ad hoc

Cook Instit. 4. Of the Jurisdiction of Courts, cha. 53. p. 159. and see M. Selden of Tythes, cap. 14. sect. 1. and in his Not. ad Badnet. pa. 167.

Episcopus elegerit, & nominaverit, veniat, ibique de causa sua respondeat, & non secundum Hundretum, sed secundum Canones & Episcopales leges rectum Deo & Episcopo suo faciat. Si vero aliquis per superbiam elatus ad iustitiam Episcopalem venire non voluerit, vocetur semel, & secundo & tertio; quod si nec sic ad emendationem venerit, Excommunicetur: Et, si opus fuerit, ad hoc vindicandum, fortiundo & Iustitia Regis vel Vicecomitis adhibeatur: Ille autem qui vocatus ad Iustitiam Episcopi venire noluit, prout in unaquaque vocatione legem Episcopalem emendabit: Huic etiam defendo & autoritate mea interdico, ne ullus Vicecom. aut priapositus, aut Minister Regis, nec aliquis Laicus homo de legibus que ad Episcopum pertinent se immittat: nec aliquis Laicus homo alium hominem sine Iustitia Episcopi ad iudicium adducat; Iudicium vero in nullo loco portetur nisi in Episcopali sede, aut in illo loco quem ille hoc Episcopus constituerit.

This is by good information the erection of the Court-Christian: Before which, things (Tythes) were handled in Conjunction with other matters, at one meeting under several persons; but here their Jurisdictions were parted. There seems observable in this Concession:

(1) Ipse Dominus Rex qui ordinariam habet Jurisdictionem, & dignitatem & potestatem super omnes qui in regno suo sunt: Habet enim omnia jura in manu sua que ad Coronam & Laicalem pertinent potestas enim; & materiale gladium, qui pertinet ad regni gubernaculum; & habet etiam Iustitiam & Iudicium que sunt Jurisdictiones, ut ex Iurisdictione sua, sicut Dei minister & Vicarius, tribuat unicuique quod suum fuerit. Habet etiam ea que sunt pacis, &c. Habet etiam coercitionem, &c. Item habet in potestate sua leges & constitutiones, &c. Nihil enim prodest jura condere nisi si que jura teneatur. Habet igitur Rex hujusmodi jura sive Jurisdictiones in manu sua. *De acquir. rerum dem. cap. 24. sect. 1. fol. 55.*

For he was under God sole Monarch: and so though he might not exercise all powers, it is right he should dispose of all powers, as to rule Preachers, though he did not preach: and so ease his shoulders by laying the burden of Duty upon whomsoever he should think fittest. He should have been everywhere, but that he cannot, saith the same Authour, of Delegations: Simple Dominus Rex ad singulas causas terminandas non sufficit, ut levior sit illi labor, in plures personas parito onere, elgere debet de regno suo viros sapientes, & timentes Deum, in quibus sit veritas eloquii, & qui oderunt avaritiam (que inducit cupiditatem) & ex illis constituere justitarios, &c. *Id. de Alton 10 l. fo. 108.*

This very Patent is alleged by M. Selden, as an instance of the Kings Supremacy, in all causes, even in all persons. Ad Eadmer. Not. pag. 166.

says

says *Bracton*: He speaks it of Lay, but who sees it not to be fairly interpretable a part of Lay-business to oversee and appoint Church-men what they should do, to direct and order where they shall speak, and treat, and act, or where not, if the manner or consequents foreseen import just fear of trouble or disturbance. Neither is this an usurpation or incroachment upon what is of spiritual office, any more then for *David* or *Hezekiah* to appoint the Courses of the Priests, How their Ephemerides for divine services should be observed, for *Solomon* or *Ioshuah* to rule All Israel, or, amongst us, a Church-Warden to examine, and grant or deny a man licence to Preach, where he has power, and he is intrusted with the peace and order of the place, which is not to meddle with Preaching, but order about it.

2. That Royal power was full: for it was done in Common-Councel, *Communi Concilio, & Consilio* (by the advice) *Archi-Episcoporum, &c. Et omnium principum regni mei*, All the Chiefs of the powers about him.

3. The things limited to be directed about, were meerly spiritual, *qu. ad regimen animarum*, no danger or intent of meddling with affairs of the Common-wealth, or interposing in business of Lay fee. A very good, and the best boundary of this Jurisdiction, and which alone secures extravagancy, from power to disturb in secular business, or so much as meddle with meerly humane affairs or interestes: whereunto the title also of, The Court-Christian, or of Religion, should have not a little furthered.

4. The remedy upon contumacy in not appearing, was proper, of Excommunication: *Peters* onely sword he might lawfully wear and use, and this but onely by the Kings Commission.

5. Yet the King assists him in the use of this, and comes to relieve his spiritual by the temporal, if need be. For the sword should back the Word, yea, *gladius gladium juvat*, intwisted power is strongest, and needs to be mutually assistant one part to the other.

6. No Lay Judge was to intromix: What needed? the things treated on were, or were to be Ecclesiastical, and of another

another sort: They had their shop by themselves, and work to do, and each his own proper and fit; And it has been the great wisdom of the Nation to keep them apart, every several thing by it self, that no work or power should crosse another.

(1) Lo. Coke, Vbi Sup.
(2) *As if, that Book being of Hen. ... time, the Bishops sale then in the hve Court, and Christianitatis Iura were then there pleaded. Vid L. Hen. 1 cap 7, pa 180. annexed to M. Lamb. Arch.*

Object. *Some Objections are from a (1) name not to be despised: as the time of inrolling, not before Rich. 2. time, and some oblique (2) contradiction from the Red Book in the Exchequer: as if by these the Patent were not authenticke: But,*

Auf. 1. Scarce is there any thing but somewhat may be said against.

2. At fair distance enough is the time of inrolment, *Rich. 2.* and then it was but inrolled.

3. The preserver with the place of preservation are much moment, *scil.* in the Tower, by the King: neither which but gives much of presumption against forgery.

4. And other transcriptions do also agree: Manuscripts like this, and of those several kept too where least suspicion of forgery is again, in Registers. As those of the (3) Bishop of London, and Archbishop of Cant. In which (4) *Robert Winchelsea* so long since as in *Edw. 2.* time, (and so long before *Rich. 2.* as in his great Grandfathers days) sent his draught of *Articuli Cleri* upon it, Presented to *Edw. 1.* as the grievance of the Church, and in his ninth year assented to for remedy.

5. *M. Selden* (a great name) questions it not. He made use of it (5) thirty years ago. publicly enough: He first exhibited it to view in (5) the edition of *Eadmers History* and has not (I believe) yet manifested any revocation of opinion.

So that I see not but we may set down this for the Bishop's Patent of Jurisdiction, authenticke enough, so long as it had any, and the first foundation of the Consistory, or as it was called *Curia Christianitatis*, in England the Court of Religion: not unfitly remembered here as the bottome of that power whereby the right of Tythes was with us discussed, and themselves recovered, as they had been, and were after, (as

(3) Cook ib.
(4) *Ceterum in actoris Rob. Winchelsii Archiep. Cant. Registro seu publicis ejus tabulis Mss. to. idem ferè verbis occurrit id quod Guilielmo Regi hic tribuitur. Regi enim Ewardo 1. in ordinum Comitibus. &c. Selden Not. ad Eadmer. pa. 168.*
(5) *Hist. of Tythes cap 14. sect. 1.*
(6) Printed in An. 1623. p. 167.

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shall continue to be shewed,) stated by the Law. Whereunto there was also successfully and ere long such following and thronging recourse, that the great Inquirer here last mentioned findes it a task worthy his painful search and curious diligence, (1) whether, after, the right were regularly handled under any other Jurisdiction? He findes sparingly *some instances*, (2) *as about Hen. 1. and his successors time, till Hen. 2. and K. John*: But since only in fives cases. 1. *By way of prohibition upon a suggestion of a Modus decimandi*. 2. *In a writ of Indicavit*: (But neither of these were at first instance.) 3. *By Scire facias from the Chancery in some cases*. 4. *In some other by process of bare command*. And, 5. *By vertue of the late Stat. of 32 Hen 8. and 2 Edw. 6.* No more: And these were but some scattering exceptions from the generall rule neither. He prefaces that inquiry with (3) these words: *It is clear* (saith he) *by the practised Common Law, both of this day, and also of the ancientest times that we have in our Tear-Books, that regularly the Jurisdiction of Spirituall Tythes (that is, of the direct and original question of their right) belongs, I think as in all other states of Christendom, properly to the Ecclesiastical Court. And the latter Statutes that have given remedy for Tythes infeodated from the Crown after the dissolution, leave also the Ancient right of Jurisdiction of Tythes to the same.* He inserts (4) after, that *since about K. Johns time Original suits in Temporall Courts for Tythes have been rare*: Adding, upon a long discourse of the *Indicavit*, and changing the proportion of the dues of a Church to be the ground of it by the Statute of *West. 2. cap. 5.* (5) *that long before, Tythes were demandable of the owner detaining them, of their own nature, and pleadable in the Spirituall Court, and there onely; and concludes, (6) that since 22 Edw. 3. there have been no Original Suits for Tythes in Temporall Courts, saving onely upon Prohibitions (at second instance,) and by the Stat. of 32 Hen. 8. and 2 Edw. 6.*

It is some difficulty to understand learned men; but the consent these things seem to have with the truth, and have both among themselves and with other of like nature abroad, renders

(1) *Hist. of Tyth. cap. 14.*

(2) *Pa. 422.*

(3) *Pa. 411.*

(4) *Pa. 411.*

(5) *Pa. 427.*

(6) *Pa. 447.*

The Civill Right

renders it hoped there hath been here no mistake ; which if, Then hath been gained 1. The erection of the Court Christian by *Will.* 1. 2. The transaction of Spiritual things there, even though formerly under the cognizance of the Common Law and Lawyer immediatly. 3. Tythes, (as *Spiritualibus annexa*, and evidently belonging to Religion, and thence within the compass of the Canons,) To move here as in their proper sphere. (Remember their Right was well enough provided for before, Here were onely to be some emergent decisions for their regulation, or Recovery of stated dues,) 4. The Lay Jurisdiction outed as to cognizance immediatly direct and ordinary. 5. In practice things have been no doubt according. 6. And therefore we must now chiefly fit a while attend the Church.

C H A P. XIX.



Which we shall in two parts: as well to the *pro* *dare*, as *Ins dicere*; to what we finde in the Interval to have been *Legislative*, as what was *Executive*; Giving more largely what belongs to the former, wherein was used the allowed power given in Regulating the Rule framing Canons, or setting or keeping to right, that Law was here the rule of Right, but more sparingly touching at the later which concerned known practise: For, that such Courts were kept, is a thing vulgarly and to all known; That a discussion was there, and a sentence the ground of Right and Own, the Lawyers of the other Gown will not deny; That things were there disposed, transposed, and settled to full property, the event did shew. Of this therefore the more sparingly, which is known and did but help to *Recover Right*; That which *Gave it*, being more proper for us, and both fitly ranged under that generall head of what was done by that

that power we are now confined to, which is Ecclesiastick. And here first, If the Synod at *Westminster*, whereof (1) before, were but a Synod, remembered be it and granted hence, what authority it must then have had: And likewise another more clearly a Synod under the Conquerour, but written in Saxon, where, (divers laws preceding of fasting, alms, penance, &c.) we have, (2) *Let Tythes be paid of all that is possessed by the Lords bounty.*

In a Council at *Cleremount in France*, one (3) Canon was, *Unaqueque Ecclesia decimas suas habeat, nec ad aliam transferantur. Let every Church have its own Tythes without confusion:* Which would not likely have been taken notice of in our authentique story, if it had not concerned us, as indeed it did, and was no doubt (4) of Catholique observation.

In (5) *Hen. 1.* time, I finde it decreed in a Council held under *William* the Archbishop about the year 1129. *Decimas sicut Dei summi Dominicas ex integro reddi precipimus. We command they be fully allowed as the Lords Demesnes.*

In (6) another at *Windfore*, about then is this Canon: *Ut Laici decimas reddant sicut praeceptum est: That Laymen pay, as is commanded.* (I am now transcribing, and so hastening: It will not be long ere we get on our own wings again.)

(7) *Alberique* Bishop of *Ostia* was Legate here under *Innocent* the second, in *K. Stevens* time, and He held a Synod in *Anno 3.* where is this Canon: *De omnibus Primitiis restis decimas dari Apostolica auctoritate precipimus, quas qui reddere noluerit, Anathematis in eum sententia proferatur:* Let him that pays not, be Excommunicate; where it seems *Primitia* must be understood for every new years increase.

(8) In *Eugen. 2.* time, about the year 1147, under the same King was held a Synod at *Westminster*, wherein tythes are disposed of. It has no more then a supposition of them, and that the Church disposed, which may yet crave place here as not of no consideration. *Nullus Abbas, Nullus Prior,*

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Nullus

(1) Pag. 111.

(2) Selden. *Hist. of Tythes*, chap. 8. sect. 14.

(3) *Moth. Par. ad an. 1095. par. 21. in Will. 2.*

(4) *Hæc quæ sequuntur capitula constituit. Vrbano* & universali Ecclesie tradidit observanda. *Id. ca. 20.*

(5) Tildesly *An. mad. vest. on M. Seldens Hist. pa. 164.*

(6) *Selden Vbi Sup. sect. 15.*

(7) *Id. sect. 18.*

(8) *Ms. in the p. b. library at Oxford cited in the margin of D. Ridley. View of the Laws, pa. 155.*

(1) Ib.

Nullus omnino Monachus aut Clericus Ecclesiam sine decimam—sine Episcopi Consensu, &c. And (1) two years after in another Synod there to the same purpose: *Utenulla persona Ecclesias vel decimas accipiat—sine auctoritate Episcopi.*

By the way, we may not about these times much look for set and purposed binding Laws about Tythes; They needed not, For *Such* had passed before, sufficient to raise and assure a *Duc*: But onely to *Regulate*, dispose, or determine about emergent controversies, concerning them, and these not wanting.

(2) Lib. 3. tit. 30. de decimis.

(3) Vid. Selden *Reuer.* pa. 489.

In *Hen. 2.* time, I finde *Alexander* the third directing severall Constitutions (for that force his Orders had here) to the Bishops of *Canterbury*, *Winchester*, and *Excester*. They are taken by *Gregor. 9.* into (2) the body of the Decretals, and no doubt had their power and found obedience here: for (3) where the Kingdome did not crosse, the Canons were, and it seemes by the Proviso of 25 *Hen. 8.* 19. are binding Laws. And let no man object here the usurpation, or allay of credit from forain authority: Things so settled do, no doubt, often contract a right in Time, which (if the power be able to support and bear it self out,) doth with continuance grow up and soder into strength and firmesse enough, able ere long to walk the world without guide or aid, or we have little of stayedness and solidity here in *England*. If we go about to undo all (of secular depending on sacred) which had its first rise, and that whereby it yet stands, from *Rome*, We need not go beyond Sea for *Babylon*, it will come home shortly to us, and we shall have confusion enough within our own Thresholds. Though we do not in present, we must allow of many things done heretofore and settled by usurpations, proceeding as well from abroad, as exercised at home, or the fruit of weightiest transactions will be robbed away from us, perhaps the pillars of the Common-wealth shaken. As to these three Epistles, the first of them gives order as 'twere by a binding Law thus: (4) *Pervenit ad nos, &c. Mandamus, quatenus Thesaurarios vestros monere curetis, & si opus fuerit sub Excommunicationis diffri-*

(4) Cap. 5.

districcione compellere, ut de proventibus Molendinorum, Piscariarum, feno, & lana decimas Ecclesiis, quibus debentur, cum integritate persolvant. It was for four sort of Tythes to be paid, of Mills, Fish-ponds, Hay, and Wool: having after monition, Excommunication to refusers.

(1) The next is to the Bishop of Winchester: *Nuncios; & infra. Mandamus quatenus Parochianos tuos de avibus, & de omni fructu decimas persolvere Ecclesiastica districcione compellas* for Bees, and Fruit. (1) Cap. 6.

(2) The last to the Bishop of Excester: *Cum homines de Hortona, de frugibus, novem partibus sibi retentis, decimam Ecclesia cuius Parochiani sunt, sine diminutione solvere teneantur; & antequam id faciant servientibus, & Mercenariis suis de frugibus non decimatis debita totius anni pro servicio suo impendant, tunc demum de residuo decimam solventes, Mandamus quatenus eos cogatis, ut decimam statim fructibus collectis persolvant, atque de subtrahitis & retentis dignam satisfactionem exhibere procurent.* It seems they were willing to deduct the charge of the Fermage before they marked out the Tythes, paying their servants out of the fruit for the work bestowed about them, and so apportion onely out of the free bounty of heaven, (3) a thing much stood upon, and by this Law stood against, which willed the tenth of all as it grew, and so was the pattern of the Old Testament: Their seed and labour were also chargeable, yet they were bound up, of All, without any deduction: And if *Iehovah* gave them their land, which, (presuming they would sow,) he might the better expect a charge from his own gift, This exaction is no less reasonable, or more burdensome from us who Give nothing (of our own,) but issue out onely what was *Given* and set aside by others; it *Iehovah* required to be restored back to him of his own, we doe but pay what others of their bounty Gave, And therefore with them as to separating any thing we are possessed of in full title as our Own. *Iam sumus ergo pares.* (2) Cap. 7.

Out of the Canon (4) *Roger Hoveden* points us to another plant growing in our own soil, which no doubt lived to take fruit downward, and bear fruit upward; and it was set

(3) Cap. 22. 26.
28. seq. & Vid.
Lyndewood tit.
de decimis tit.
Erroris. Cap.
Quoniam propter
ter. & cap. Sancta
Ecclesia.

(4) Annal. par. 3
pa 543. Edic.
1601. Francofur.
That it was taken
out of the Council
of Rome (ex Con-
cilio Rothoma-
geni) the letter
forth brought in
the margin.

toward the end of this *Hen.* 2. time by *Rich.* Archb. of *Can.* in a Synod at *Westminster* the Lo. day after the Ascension, where (the King and his son being present) passed thus: *Omnes decima terra sive de frugibus sive de fructibus domini sunt & illi sanctificantur. Sed quia multi modo inveniuntur decimis dare nolentes, statuimus; ut juxta Domini papae precepta admoneantur semel, secundo & tertio* (according to the High Commission before given out by *Will.* 1.) *ut de grano, de vino, de fructibus arborum, de foetibus animalium, de lana, de agnis, de butyro & Caseo, de lino & Canabe, & de reliquis quae annuatim renovantur, Decimas integre persolvant;* or if not, *Anathema.* A full and plain Law, *speciatim* for Corn, Wine, Fruit, breed of Cattle, Wooll, Lamb, Butter, Cheefe, Flaxe, Hemp, and all that grows and renew yearly, &c. and of what power in the state, may be guessed both by from what before, where the Superiour Powers had joyned to intrust the Church in such matters (which implies their authority still;) and further here the K. and his son gave the present countenance of their persons to patronize and establish it. And heed also the *Dueneys* supposed in the beginning, they were not now so much willed to be payed, as shifters to be brought in to discharge of known dutie. Elsewhere also in the same (1) Authour, *Hubert* Arch. of *Can.* kept a Synod at *York* the Tuesday after Saint *Barnabies* day, 6 *Rich.* 1. where one of the binding results of Council speaks thus: *Cum Decima sint tributa egentium animarum, & te precepto Domini dari debeant, non est reddentis eas diminueri* : Therefore all to be paid without any diminution for *Fermage*, of which before, entirely. And much severity is again in another (2) Provincial of the same *Hubert* afterward, with Excommunication to those should withdraw any thing to pay the Harvest-mans wages, or the charge of new-broke grounds, or not to the Parish Church, &c. But because this meeting was against the Lord Chief Justice his Prohibition, and so had not the authority of the secular power, I pass it over: though then it were of some doubt whether such meetings were valid, which is since clearly resolved that they are not, by the Statute 25 *Hen.* 8. 19. And so for

(1) Par. ead. pa.
75

(2) In ead. pa.
808.

another (1) Canon against whether Templars or others should receive Tythes from Lay-hands, in the same Authour.

To some time of *Hen. 2.* is referred a Council *Lateran* under *Alex. 3.* limiting the former liberty of paying to Any Church, to the Parochial, as fittest to have benefit, and nearest to take the dues up : though later and quicker apprehensions remove the scene to *Innoc. 3.* who in *K. Johns* time expressed his single will onely from the *Lateran* Church. This gave the mistake, or might well. *M. Selden* has it from the (2) print, and the (3) *Lo. Cook* from the more authentic Roll in the Tower, speaking fully what a papall Constitution might, and no more, thus : *Pervenit ad audientiam nostram, quod multi in Dioecesi tua Decimas suas integras, vel duas partes ipsarum, non illis Ecclesiis in quarum Parochiis habitant, vel ubi pradia habent, & à quibus Ecclesiastica percipiunt Sacramenta, persolvunt, sed eas aliis pro sua distribuunt voluntate. Cum igitur inconveniens esse videatur, & à ratione dissimile, ut Ecclesia qua spiritualia seminant, metere non debeant à suis Parochianis temporalia, & habere :* Therefore proceed according to the Canons, and see obedience yielded by Church-censure, &c. *Dat. Lateran. Nonas Julii.*

Here, they say, was first a Parochial Right established : And if so, a Right ; which I think none will deny, and is all I contend for : and the Lord Chief Justice grants it his way ; though not by force of the Decretal, yet as Just and Right it was allowed, and so became *Lex terra.* Any way serves the turn, and if the Position, much more the Supposition : If a Parochial right, then a Right, at least. Review some of the words : to which purpose, The grievance complained of was, that Many did not pay their whole Tythes, *Decimas suas integras vel duas partes ipsarum* — to their own Minister, but at pleasure : So they paid, the thing was done, And this the height of what I reach at.

To the same Kings time also I refer another Decretal sent hither from *Innoc. 3.* to the Bishop of *Ely*, which had no doubt the same force here, not for right of Tythes (which remem-

(1) *Ib. Pa. 304*

(2) *Cap. 8. sect. 23. & Vid. cap. 10. sect. 1.*
(3) *Instit. 2. pa. 641.*

Decret. Gregor. Lib. 3 cap. 28. col. 230. Edit. Taurin.

remember had been before established, and was now but made Parochial, More then To Tythe, To the Parish Church, now growing as common as to enjoy,) but to satisfie a doubt that might arise about the manner of Tything, and wils no deduction should be for Mills and Ponds: (And still remember also by what immediate consequence the supream power went on confirming All, whereof we read no contradiction.) *Pastoralis Officii, &c. Explicari postulasti utrum quis possit de molendinis & piscariis necessarias expensas deducere, priusquam solvat decimas ex eisdem, sicut est in negotiatione concessum?* But it is long, and I refer to it. The foraine power does somewhat againe here blemish: but remember again too what before, and adde the so often mentioned confirmation to us of *Hen. 8.* If a steward can do nothing, yet if a Lord ratifie, the Act is good: If the Chaplan be over-busie in a family, yet if the Master confirm, now 'tis valid, though the thing were besides his Cure: So if the Pope medled with that he should not, the King and State looking on, and not contradicting but consenting and approving; Here seems now a consummation of all-sufficieny of power at the first, and time going on to ripen what at first production was but raw, a growing up to all perfection. And so in that which next follows which I take to be of the same to the same, wherein resolution was given about new-broke grounds, supposing, I understand the Tythes of a place to be payable to a person, or Church out of the Parish, who should then have those new Tythes? 'Tis answered in favour of the Parish Church there, *That Church; unless the forainer can shew a very fair plea for them: Cum enim perceptio decimarum ad parochiales Ecclesias de Jure communi pertinet, (so far it was gone then,) decima novialium qua sunt in parochiis earundem, ad ipsas proculdubio pertinere noscuntur, nisi ab his qua alias percipiunt decimas, rationabilis causa ostendatur, per quam appareat novialium ad eas decimas pertinere.* Sith of Common right Tythes did belong to the Parish where they grew, The new-broke grounds must tythe thither also, unless very sufficient reason can be shewn to the contrary: This the substance.

But the strongest and most vigorous Constitution which with life and power hath acted among us, and indeed was the late seen and looked upon Rule and Law to guide All, was that (1) Canon of *Rob. Winchelsey*, as it is usually styled, though *Lindwood* (the letter forth) says he found it in some Books ascribed to *Boniface* (of the same See,) or as in one very ancient copy, *Constitutio communis Episcoporum congregatorum apud* (2) *Merton in Communi Concilio*; as if so, it was the stronger, an act of the whole Convocation. But whose soever it was, it was about those times. (Remember *Rob. Winchelsey* (3) entered his charge *Anno Domini* 1293. about 19 *Edm. 1.* and (4) ended it about 1312, and 4 *Edm. 2.* and so we are, as we took leave, a little without the strict bounds of our method, behither *M. Charta.*) The words are as followeth; (and I English them for the use of every Reader.)

Quoniam propter diversas consuetudines in petendo decimas per diversas Ecclesias inter rectores Ecclesiarum & Parochianos suos rixæ & contentiones, scandala & odia maxima multotiens oriuntur. Volumus & statimus quod in cunctis Ecclesiis per Cantuariensem provinciam constitutis uniformis sit petitio decimarum & proveniunt Ecclesiarum. In primis, volumus quod decime de frugibus, non deductis expensis, integrè & sine aliqua diminutione solvantur, & de fructibus arborum, & de seminibus omnibus, et de herbis hortorum nisi parochiani competentem fecerint redemptionem pro talibus decimis. Volumus

Whereas by reason of divers ways of tything in divers Churches, strife and contention are wont to arise between the Church-Governour and his people; we will and appoint, that through the Province of *Canterbury* there be this uniform way of Tything. First, wee will that Tythes be paid of Fruit without any deduction of charge intirely, and without diminution, (so reaching in an order about the charge of *Fermage*, spoken of before, and preventing that exception;) and of fruit of trees likewise, and of all seeds and garden hearbs, unless the Parishioners

(1) *Lyndwood* Constit. provinc. lib. 3. tit. de decimis.

(2) *And so it is also in Pupilla oculi, part. 1 cap. 3. says M. Selden.*

(3) *Polyd. Virg. Histor. Anglic. lib. 17. pa. 324. (4) Id. lib. 18. F2 312.*

ners will make some competent exception for them. Also we will and appoint, that Tythes be required of hay, (or green grats, if it be cut to spend, says *Lyndewood* in his *Glosse*) wherever it grow, in greater Meadows, or lesser, or in the High-ways, and that it be paid as is best for the Church: For breed of Cattle, as, touching Lambs, we appoint that for sixe and below, so many halfpence; if there be seven, the seventh shall be tythe, yet so, that the Church-Govenour receiving the seventh, shall pay 3 half-pence to the Parishioner: He that takes one of eight, a penny, one of nine, a half-penny; or let the Rector stay for the tenth, if he had rather, to the following year. And he that so stays, let him alwayes have the second or third best of the following yeare, and this for his stay. And so is it to be understood of the tenth of Wooll. But if the Sheep depasture one where in Winter, another where in Summer, the tythe is to be divided. In like manner if any one shall buy them in the middle of the year, and it be known from what Parish the sheep come,

& statuimus etiam quod decim. de fœnis ubicunque crescant, sive in magnis pratis sive in parvis sive in Chimini exigantur, & prout expellat Ecclesia perfolvantur. De numeris rumentis autem animalium, scilicet de agnis, Statuimus quod pro sex agnis infra sex oboli dentur pro decima: si septem sint agni, numero septimus agnus datur pro decima rectori: ita tamen quod rector Ecclesia pro septimum agnum recipit, tres obolos in recompensationem solvat parochiano à quo decimam illam recepit. Qui octiduum recepit, det denarium. Qui vero Nonum, let obolos parochiano: vel expectet rector usque ad alium annum decimam plenarie agnum possit recipere si maluerit; & qui ita expectat semper exigat secundum agnum meliorem vel tertium ad minus de agnis secundum anni, & hoc pro expectatione primi anni. Et ita intelligendum est de decima lana. Sed si oves alibi in hyeme, alibi in aestate nutriantur, dividenda est decima. Similiter si quis medio tempore emerit vel vendiderit oves, & certum sit à qua parochia illa oves venerint, prout dividenda est decima, sicut de re que sequitur de domo

domicilia. Si autem incertū fuerit; habeat illa Ecclesia totam decimam infra cuius limites tempore consensionis inveniuntur. De lacte vero volumus quod decima solvatur dum durat, videlicet de Caseo tempore suo: & de lacte in Autumno & hyeme: Nisi parochiani velint pro talibus facere competentem redemptionem, & hoc ad valorem decimæ & ad commodum Ecclesiæ. De proventus autem molendinorum, volumus quod decima fideliter & integrè solvantur. De pasturis autem & pascuis tam non communibus quam communibus statuimus quod decima fideliter persolvantur, & hoc per numerum animalium & dierum, ut expedit Ecclesiæ. De piscationibus, & apibus sicut de omnibus aliis Bonis iuste acquisitis qua renovantur per annum, statuimus quod decima solvantur & exigantur debito modo. Statuimus etiam quod decima personales solvantur de artificibus & mercatoribus, sc. de lucro negotiationis. Similiter de Carpentariis, Fabris, Cementariis, Textoribus, Pandoxatricibus, & omnibus aliis Stipendiariis Operariis; ut videlicet dent decimas de Stipendiis suis, nisi

the tythe is to be divided, as of a thing-belonging to several places; but if it be not known, let the Church have the benefit where they are at shear-time. Concerning Milk, we will that the tythe be paid as it ariseth, that is, of Cheese, so long as it is made, and of milk in Autumn and Winter, unless the Parishioners will make due compensation according to the value of the tythe, and to the Churches advantage. As concerning the profits of Mills, we will that tythes be faithfully & intirely paid. As for pasture and feeding grounds, as well Common as other, we appoint the tythe be fully paid, and this with regard to the Beasts and time of going, as shall be best for the Church. For Fishings and Bees, as of any other goods honestly gotten, which renew yearly, we appoint, that the tythe be paid and required duly. We decree also, that personal tythes be paid by Handy-crafts-men and Merchants, that is, of the gain of their trading; the like of Carpenters, Smiths, Masons, Weavers, and all other hired Labourers, that they give the tythe of their wages, unless they will give any

The Civill Right

thing certain toward the Light in the Church, and this at the Church-governors choice —

Then (after some words of Mortuaries.) But because there are many that refuse to pay their tythes, we will, that Parishioners be warned once, twice and thrice, (which was the number of essoyns allowed in the Conquerours Charter, as before) to pay their tythes to God and the Church truly. Or if they refuse, they be first suspended from entring into the Church, and so be compelled by Ecclesiasticall censure, if need be, to pay. Or if they require release or absolution from suspension, let them be sent to the Ordinary of the place for it, and duly punished. And as to the Church-Governors themselves, or Vicars, or Chaplains by the year, who for fear or favour of men, setting aside their awe to Heaven, do not effectually require their tythes aforesaid, let themselves be suspended till they pay a mark to the Archdeacon of the place for their disobedience.

Sipendiarii ipsi aliquid certum velint dare ad opus vel ad lumen Ecclesie, si rectori ipsius Ecclesie placuerit —

Sed quoniam inveniuntur multi decimas sponte dare nudentes, statuimus quod parochiani moneantur primo, secundo & tertio ut decima Deo & Ecclesie fideliter solvant. Quod si se non emendaverint, primo ab ingressu Ecclesie suspendantur, & sic demum ad solutionem decimarum per censuram Ecclesiasticam, si necesse fuerit, compellantur. Si autem dicta suspensionis relaxationem vel absolutiorem petierint, ad Ordinarium loci mittentur absolventi, & debito modo puniendi. Rectores autem Ecclesiarum seu Vicarii aut Capellani annui qui predictas decimas predicti modo propter formidinem hominum seu favorem, timere Dei postposito, (ut predictum est) cum effectu non petierint, poena suspensionis innodentur donec dimidiam marcam argenti Archidiacono loci persolvant.

I have both transcribed at length, and translated this, as I said, because it is the chief Law, whereupon (immediatly) the

the dueness of tythes is grounded and known by the Canon: as to the Regulation of the manner of collecting this prevailing, though not as to the dueness it self; for this, as hath been shewed, was secured before, and therefore the law begins with supposition, and blame, that men did not Pay as they ought, which was here intended to be remedied. And for the sufficient authority hereof, we need not much doubt; for Lawyers and Men were awaked both then and ever since, & would not through ages and generations have been frightened or cheated with meer empty shews of Paper Canons into a foolish & childish awe of what was but terrible. They knew no doubt, from time to time there was strength enough (with help of former grounds) to carry things on and force them, if any rub of opposition were laid in the way, which made them pick a vertue out of that was indeed a kinde of necessity, and doe with seeming willingness, what if they would not, they must and might have been compelled to. Other Constitutions are also about the same time, but not of so great moment; yet, because they have some force, our niggardize shall not suppress what may be pleasing, profitable, or in any regard useful. The next is about Cattle removeable from place to place, and hath virtually fixe propositions.

Quoniam ut audivimus, &c. Nos viam pacis preparare volentes statuendo definimus, & definiendo statuimus, quod ad Ecclesias in quarum parochiis oves a tempore tonsionis usque ad Festum S. Martini in hyeme continue pascuntur & cubant, decima lana, lactis, & casei ejusdem temporis, licet postea amota fuerint ab illa parochia & alibi tondeantur, integrè solvantur. Et, ne fraus

1. Where sheep are continually feeding, and folded from shear-time to S. Martins day, there the whole tythe to be payable to that Church, and caution given accordingly before the removal.

2. Within that space if they change from place to place, each Church to be satisfied for the time, not reckoning of less then thirty days; Or if they feed in one place,

place; and fold in another, then fiat in casu premissis, præci-
to divide; and so after rate-
ably. *pinus quod antequam ovi
amoveantur à pasturis vel
etiam distrahantur, Ecclesia-
rum Rectoribus sufficienter de
solvenda decima caveatur.
Quod si infra prædictum
tempus ad diversarum parochi-*

3. Milke and Cheese to be paid where the Beasts feed and couch: If these in severall places, then to divide. *arum pasturam transferantur, qualibet Ecclesia pro rata
temporis portione decimam percipiet earundem; minori 30
dierum spatio in rata temporis minimè computando. Sive-
rò per totum tempus prædictum cubant in una parochia, &
pascantur continuè in alia, inter ipsas Ecclesias decima di-
vidatur. Quod si post Festum S. Martini ducantur ad pa-
scua aliena & usque ad tempus tonsionis in una vel diver-
sis parochiis, sive in propriis pasturis dominorum suorum
sive alterius cujuscunque pascantur, habita ratione ad nu-
merum ovium pascua aestimentur & secundum aestimationem
pascuorum ab eorum dominis exigantur decima.*

4. Lambs, Colts, &c. to be paid, habita ratione ad loca diversa ubi gignuntur, oriuntur, & ad moram quam traxerint in eisdem: with regard to where they were bred, kept, and stayed: Milk, where the quantity is small, and so for Lambs, Colts, &c. according to the usage of the place.

5. What sheep live to S. Martins day, to be accounted for, though they be sold to the Shambles, or die after.

6. If shorn in any Parish, the Wooll supposed there due, unless it were made appear to the contrary.

This I said, is but supplementall, for parting strife. Men would be ready to require their dues, and every honest man should be as ready to pay; but occasions requiring them to chop and change before the year came round, this was an equall and conscionable both provision and prævision, to set down before-hand a fore-appointed rule what either should expect, and so part strife before it was begun. A summary confirmation of all which before, and more distinct recitation of some things, is in another of the same Authour following:

Sancta

Sancta Ecclesia, &c. Cum
Sacro eloquio jubente de om-
nibus qua novantur per annū
nullo tempore excluso decima
sint cum omni integritate &
absque diminutione solvende,
Licetque unicuique capella-
no parochiali, Rectori sive Vi-
cario Parochianos suos per cen-
suram Ecclesiasticam ad solu-
tionem decimarum compellere,
Omnibus & singulis Rectori-
bus, Vicariis & Capellanis
Parochialibus & Ecclesiarū
Parochialium Curatis per no-
stram Provinciam Constitutis
in virtute obedientie manda-
mus firmiter injungentes, qua-
tenus diligenter moneant &
efficaciter inducant, & quili-
bet ipsorum in Parochia sua
moneat & inducat, quod præ-
dicti Parochiani omnes & sin-
guli integrè & sine diminu-
tionem decimas inferiūs anno-
tatas Ecclesiis suis persol-
vant: sc. decimam lactis à

Forasmuch as by holy Scri-
 pture all that renews yearly is
 to be tythed, and it is lawfull
 to compel men thereto; we
 command all Church-Gover-
 nours and their Substitutes to
 move and inforce all under
 their powers to this duty: that
 is, to pay of milk, of the pro-
 fits of wood, of mast if it be
 sold, of stews, ponds, rivers,
 pools, trees, cattle, pigeons,
 seeds, fruits, beasts of warren,
 (that is, under known custody
 and guard, for so the word
 imports) of hawking, gardens,
 orchards, wooll, flaxe, wine,
 grain, peat, swans, chicken,
 geese, ducks, egges, hedge-
 rows, bees, honey, wax, mils,
 hunting, handicrafts, mer-
 chandise, lamb, calf, colt, and
 all other revenue without de-
 duction of costs, &c. or if not,
 to proceed to Suspension, and
 Excommunication, &c.

primo tempore sua novationis, tam mense Augusti quàm
aliis mensibus, de proventibus etiam boscorum, pannagiis
sylvarum, & ceterarum arborum si vendantur, vivario-
rum, piscariorum, fluminum, stagnorum, arborum, pecorum,
columbarum, seminum, fructuum, bestiarum guarenarum, au-
cupitii, ortorum, curtilagiorum, lana, lini, vini, & gra-
ni, turbarum in locis quibus fabricantur & fodiuntur, cyg-
norum, caponum, ancarum, & anatum, overum, thenicii
agrorum, apium, mellis, & cere, molendinorum, venatio-
num, artificiorum, & negotiationum, necnon agnorum, vi-
torum, pullorum equinorum secundum eorum valorem, &
omnium

omnium proventuum rerum aliarum de catero satisfiant competentes Ecclesia quibus de Jure tenentur, (harping still upon the right and that granted) nullis expensis ratione prastationis decimarum deductis seu retentis, nisi tantum de prastationis decimarum artificiorum & negotiationum. Quid si monitionibus suis parere contempserint, per suspensionis, Excommunicationis & interdicti sententias eos ad prastationem decimarum hujusmodi compellant.

These three Constitutions (Decrees, Statutes, Laws, Orders, they were for payment, call them what you will,) were in one mans time, and about the parting of *Edw. 1.* and *Edw. 2.* Reigns: which (it seems) did not yet so remedy things as to prevent all future broyls. A thing impossible: Constitutions will last while the world: Laws can never reach their full intended force and operation in quieting strifes, and calming the storms of mens rage and wrangling passions *full and wholly*, but ever and anon they will break out to mischief and disturbance: the Root is in our corrupt nature, which will not but have Spring at some time of the year or other to shoot forth and fructifie unto grief and trouble, in resemblance of the earth, cursed for our sakes into a proneness to weeds, and most Natural feracity of Briars and Thorns. We shall finde this disposition generally received throughout the world, that most men are more quick and nimble of the receiving hand, then of the giving, and though they be the words of the Lord Jesu, That it is more blessed to give then to receive, yet they will take the contrary by a bold inversion, and think it better howsoever for them, to Receive then to Give. Of the same extent is also this Constitution of things, That where many are to pay known dues, some will bee found backward, standing off as far as they dare till necessity constrain them to come in; Which makes it a rare instance but if any be to receive never so known dues, some will fall short, at least there must be wrangling with a multitude, and this shall be hardly avoided with some, who never hath to deal with many. A fruit of our corrupt nature, mourn we for it in private, and sorrowful mischance to many of all mankind, condemned hereby to live as it were in the

fury of a tempest, in the flames of passion burning and renewed to the mutual torment of One another : A great disturbance of the quiet and peaceable world, and unfortunate occasion of many troubles to many, who being of themselves not disposed to trouble, are yet (by the things they have to deal with) forced beside their nature, and by the cunning craftiness of those that lay in wait to deceive (whose versatile shifts are hard to be avoided) often put upon this Dilemma, of either *gaining contention*, or *losing right* ; and if there be but one of a multitude disposed to wrangle, he that hath to deal with All, must oppose that man and bear half the blame ; and as suits and troubles increase with his unjust vexation, his seeming guilt increases also. If this were not, we should have much toward a quiet and thereby happy world, approaching the simplicity of the golden age, with return of its peace, calmness, meekness, love, and a constant serenity of all things ; A blessing so highly enriching, that it seems the wise Providence above does not think fit to trust, or rather tempt us with, because perhaps beyond our power to manage or bear so great a happiness. Which aptness to contention shewed it self soon after the Canons formerly made and mentioned, divers seeking shifts to evade and disappoint the clear intent of those plain and well-meant Laws, so plain, one would think, that there were no way left to delude or shift from the meaning and purpose laid forth in such plain and perspicuous expressions : Which awaked also ere long after that, the watchfull prudence of him sate then in highest place of power and trust for such things, to cast the best he could to advance ready justice, and yet further prevention of all disappointments thereof. In time it follows (as in place it goes before, in the same *Lyndewood*) those we have given, and was intended to strike off their exceptions, who could not deny their dues, or to set them out, but (1) they

do ejus, & universi qui habitant in ea, decimas in signum universalis Domini sibi reddi præceperit & pro suo cultu easdem Clericis Assignavit, aliquando malitiosè impediunt, impedire faciant vel procurant viros Ecclesiasticos ad quos spectat perceptio decimarum eorumque servitores quomòdolibet ingressum & egressum in prædia & à prædiis de quibus hujusmodi decimæ proveniunt habere possunt, &c. Alii etiam nisi prius chisorbæ vel caligæ seu quicquam aliud eis dentur, seu promittantur, decimas hujusmodi asportant & consumunt, asportant & consumi faciunt, seu aliquid damnum inferunt inferre faciunt in eisdem. *Symon Meppam*, cap. Quia quidam.

(1) Alii vero non attendentes quod Dominus Omnipotens, cujus est terra & plenitudo.

would

would hinder those should fetch them from coming upon their ground, without which they could not obtain them effectually, unless they had gloves, stockings, or some other such bribes given them for the quiet delivery of what they acknowledged due; which if they had not, they would pilloin or corrupt, or one way or other disappoint the true and rightful owner. O malice, whether wilt thou! O guile, when wilt thou leave working! O fraud, deceit, and wretched covetousness, when will you cease your injurious combinations! O cursed craft, and griping, shifting, over-reaching worldly-mindedness, when will you give over to disappoint the best-meant Laws of men, sith your use hath been of old to pervert even (1) the Righteous ways of the Lord.

(1) Διασπίρων
της οδου κυριου
της ευθείας.
Crooking his
straights ways.
AR. 13. 10.

The remedy was here, as in former cases, the severity of Excommunication: *Nos igitur perversorum damnabilium consiliis salubre remedium imponere cupientes, nihil novum statuantes, sed antiquorum Canonum statuta in medium adducentes, (mark that, no innovation) universos & singulos hujusmodi instigatores, impeditores, & alios supradictos, sicut to be fast locked under the heaviest of Church-Censures, and not released from that Bond of God, save at the house of death, or upon promise of amendment with satisfaction. Yet this helped not all: The wit of malice that pierceth deep had found out another nest of manifold devices to hinder the course of right (2) by these four disturbances: 1. Paying but the Eleventh for the Tenth, in regard of Summer-charges, &c. 2. Dividing but not marking out the sheaf, and (3) then molesting the taker of it away as for theft. 3. Molesting the workmen for taking the convenientest way. 4. Forbidding to take what was ready, till the whole field was rid, which occasioned much spoil: Against all which is drawn the glittering sword, of which before of Church-censure, and the power used (lavishly) enough which should not be used upon trifling occasions. Excommunication is a heavy doom, 'tis hard it should be laid on for trifles, as the petty things of this world, or the powers of the world to come drawn forth to vile and sordid profanation, degraded below their due value, and highest worth to serve any ends which are not spiritual.*

(2) Ioan Stratford tit eod cap. Erroris damnable

(3) The remedy of this grievance might be that which King Richard after payment ded to grants by his gracious Commission of a Rich. 2. cap. 14. remedied below, pa.



CHAP. XX.



Ave we yet done? no; we are now but to begin another tedious wrangling controversie about Tythe-wood, and this indeed laited long with much violence between the parties contending, till at last it settled (wel near) in the binding statute of *Sylva cadua*. The grievance on the Churches part was (1) this; That whereas leis charge

was in manuring for Woods, and longer expectation for one Harvest in many years, yet disbursements for the felling, &c. were claimed to be allowed when it came, before the Tythe set out, and the Countrey, which was worst, had a custome for this unreasonableness. No such matter: The continuance of the disease did rather call for a more speedy remedy, which it had, and therefore is first determined what *Sylva cadua* was; *Qua cujuscunque existens generis arborum in hoc habetur ut cadatur*, ('twas let grow to be cut,) & *qua etiam succisa rursus ex stirpibus aut radicibus renascitur*, (being cut, it grew again afresh:) and then that All should be tythed as it was felled; or if not, proceed to censure as before. But this it seems the State would not allow; for the inconveniences emergent occasioned that complaint put up by the (2) Commons then sitting in Parliament for remedy: And so the year following, *sc.* 18 *Edw.* 3. and three years after again, *sc.* 21 *Edw.* 3. and four years after that, 25 *Edw.* 3. and yet not full remedy till about twenty years after, *scil.* 45 *Edw.* 3. where ordered in Parliament, and (3) ordained: *Item*, at the complaint of the great men and Commons, shewing by their Petition, that whereas they sell their great

(1) *T. it. eod. cap. Quamquam ex solventibus.*

(2) *Selden H. it. cap. 8. sect. 28. & sequ.*

(3) 45 *Edw.* 3. ca. 3. *Polton. pa.* 196.

Wood at the age of twenty yeares, or of greater age to Merchants to their own profit, or in aid of the King in his wars, Parsons and Vicars of holy Church do implem and draw the said Merchants into the Spiritual Court for the Tythes of the said Wood in the name of this Wood called Sylva cadua, whereby they cannot sell their Woods to the very value, to the great damage of them and of the Realm, It is ordained and established, that a Prohibition in this case shall be granted, and upon the same an attachment as it hath been used before this time. This was intended a finall end, but it seems was not: some doubt sprung out afterward upon pretence this (1) was not an Act, but an Ordinance, whence a return of the former circulation of things; occasion given, discontent arising, dislike, trouble, and complaint for remedy. How it was pacified I find not, but have heard that the Statute (or but Ordinance) prevailed: A signe that it was strengthened with some (2) additionall finew of new and fresh authority, forasmuch as what we see prevailing in Law, we may well suppose some Decree to have ushered the lawfulness thereof; and if upon altercation, the scales hanging even on both sides, one does at last evidently preponderate, some weight of authority may be thought likely to have been thrown into that scale we see settle and keep the advantage, and That is it there keeps and settles it. So likely it did here; and in and from this agitation of things, and so as they did settling, this seems observable, and not to be passed over: The Temporality did, we see, interpose to alter and change what the Church had decreed and settled by her best power; Their temporals were their own, and they would not endure themselves to be unreasonably inroached upon by any forced impositions, which made them move again and again, and would not cease till their grievance had remedy; I doe not finde they did the like in other cases, bound up fast by other the Churches decrees before; but let them pass; Therefore (by comparison) I judge they approved what they did not dislike; Their (3) silence gave consent, and so they suffered themselves to be carried along with that stream of power they saw come from the Church

(1) Selden ubi
sup. sec. 33.

(2) Yet there
was a Petition
put up in the next
Parliament, 47
Edw 3. and by or-
der thereupon a
Prohibition to be
formed in Chan-
cery, which was
formed, and that
has lasted all to
this day, Co. Inst.
2 pag. 643.

(3) Qui tacet,
confessio videtur.
Reg. Iur.
Can. 43. Scienti
& consentienti
non fit injuria
neque dolus. Reg.
28.

Church to carry on what it undertook, and to make a Convocation Act strong enough in this case to settle a temporall sort of things that had a touch (in that they were annexed to, and the support of Gods service) of spirituality. (For all along I desire it may be carried in minde, The Consent of men is the firm and only bottom whereupon temporal Right and Dominion do rest here: Men have agreed, Therefore Thus it was; Which was here and thus compleat and perfect.) If the Temporalty had not stirred at all, it had been some signe they might not: If they had stirred and not obtained, the victory might have seemed over their power, not their Right, and so the use of their discretion to have stayed for their right and moved by their power for it, in a time when they were likely to obtain: But sith they stirred, and obtained, and had redress reall and effectuell, A signe they might at any other time, A sign they might have obtained, A sign that in other things they let silently and quietly pass: Which sith they did not, Therefore they consented, Therefore they allowed, Therefore what was done was authoritative by Them; And so this whole disposition of things (even all *Lindwoods* Collection) had their Negative implied confirmation, in that they did not hinder, And by Consequent even by them, (save in the case of *Sylva cadua*) the Canon was Law, English Law, and approved by all, in that none cast a rub in the way to hinder, whereas they might, and in other cases did, But Here they did not. The same Authour hath other things dispersed, (for these were hitherto together under one title,) as, where (1) Prohibition is to sell any Tythes before the 25 of *March*; After, the Rector might declare his will of the fruits, to pay his debts, or satisfie legacies, which was ordered in *Hen. 3.* time: And elsewhere (2) they were to be Excommunicate who suggested by Calumny to the King and his Judges, that the Ecclesiasticall Justicers held plea of Advowsons, Chattels, and other (temporal) things belonging to the Kings Court, *Cum iidem prelati & Iudices super decimis, peccatis, & excessibus suorum subditorum sua Jurisdictionis officium, prout ad eos pertinet, exercent*; They did but do their duty and discharge their

(1) Lib. 1. tit. de Consuetudine. c. Nullus Rector.

(2) Lib. 5. tit. de Sententia Excommunic. cap. Cum superius.

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their office, meddling of those things that did appertain unto them, tythes among the rest. Neither was this the less true, or the judgement of it of no credit, because 'twas spoken of and by themselves: The thing is evidently and notoriously known, nor shall want the recognition of their jealous neighbours, the other Courts, who cannot but acknowledge the Jurisdictions here severed and cut out as it were imperially and by a thread; nor could a more proper and formal essential difference have been found out between the one and the other then this, That the one did handle *De jure Patronatus & catallis*, &c. as it ought, universally of the things of This world, and the other of the rest, and tythes among the rest.

Which lets us fitly onward to the other, the *Executive* part of these *Legislatives* hitherto, and how they had their force in the proper place designed thereunto for recovery of these things thus made Due and stated according to these Laws; but hereof I have not much to say. I was always stranger to their proceedings, nor as to gain or lose, did I ever do or suffer, what might import favour or wrong, to be thereby holpen or hindred at any time; Onely this I have heard spoke out by the clear and loud fame of the world, That here mens rights were tried, and examined, and lost, and recovered: Pleas were heard, and sentence given, and the sentence did, or should, or might have found obedience. If all had not been right and square, as we say, exactly justifiable, If there had been any remedy at *Westminster*, or any where else that could have been thought of, If the Goddess *Themis* had had any Asylum or refuge upon Earth whereunto covetous and carnal men might have had recourse in their fears, with any hopes of protection in those affrighting tempests, that like some kinde of lightning melted their gold and silver in their purses, yea, out of their purses, No doubt but such desired shelter would have been made to with greatest diligence and truest endeavour: Questionless in what dark or remote corner soever it had hid it self above ground, men would have both sought it carefully, and found it successfully: Undoubtedly every one man would have told his neighbour,

bour, and he another, these more, and by degrees all; The information would so soon and luckily have propagated it self, that no manner of doubt should now have remained, whether such a place had been or not; the path would have been more trodden to it, then to any Church or Marker-place in England: But they knew there was none such, They knew all was there, of this nature, (while it was,) firm and answerable; They knew those sentences were there (in their kinde,) by the approbation of all men, and Authority of the Law, valid as those at *Westminster*, *Pulsa dignoscere cantus, quid solidum crepet*: They knew, Try who so would, There was that solidity. Civil Laws did approve, successions of Parliament had allowed, the King had given leave, the whole State had given allowance of those proceedings, and above all, the Law held them just and according to Law: And so unless her self would contradict her self, the head fall off from a principall member, or Justice oppose Righteousness, They (all the Magistrates, Powers, Laws, and Lawyers of England) knew, and could not but pronounce a just sentence in that Court for Tythes to be just: were it for sheaf, lamb, fruit, venison, the tenth Thrave, or but a Tythe-lock of wooll; What a sentence did at *Westminster*, that a decree did there; What a Verdict and Judgement upon an Assise, That a conclusive determination upon mature deliberation did here; and What sufficient ground of Right that gave of Dominion, that a man might thence claim a piece of ground or debt of money, *Hic codex est meus, Hac domus est vestra*, By equall vertue of a like sentence here, this due charged upon every parcel of land or herd of Cattle had declared right, yea, and judgement for it, in order to execution; Or if any would not come and submit, *vocetur primo, & secundo, & quod si nec sic ad emendationem venerit, Excommunicetur, as tertio*; leave was given in the Charter.

Thus as to the power intrusted with the Church, I have now almost done; we see what the Supream Authority gave in Commission, we see what use was made of it, we see what connivence or more there was of all other powers, and what obedience likely; but of this the less being unacquainted at

Offices:

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Offices: We cannot in short doubt but the Church made Laws about Tythes, that they caused them to be done to execution, that the State inabled them, that the whole Civill Power more then connived or permitted, appointed, authorised, and strengthened that power whereby was acted thus according to office and duty on one part, and leave, desire, expectation, and full trust on the other: The result of all doubtless a full right, a clear, assured, undoubted, fast, safe and honest title, as good as Any had to Any thing, and the evidence of things may discharge the superfluity of more waste words; If any right were anywhere, it may doubtless be reasonably thought to have been unavoidably, *Here, Sure, and Thus*. There remains yet one onely thing more, somewhat in intention, was never quickned to full Act, but was purposed to give much in little, the life, spirits, and vertue of all before in the new intended to be purified Canon Law by *Hen. 8.* authority. A thing often glanced at, but here fit to be represented together, and briefly and summarily was

(1) 35 Hen 8 19.

(2) *Provided al-
ways, and be it ena-
ed by A. sheweth
aforesaid, that
thou Art for Recov-
ering of Tythes, no
any thing therein
contained, shall
take force or effect,
but on y wast such
time as the Kings
Highnesse, and such
other 22 persons,
which his Highnesse
shall name and ap-
point for the mak-
ing and establish-
ing of such Laws,
at his Highnesse
shall confirm and
ratifie to be called
the Ecclesiastical
Laws of this Church
of England. And
after the said
Laws so ratified*

*and confirmed as u aforesaid, that then the Tythes to be paid to every Ecclesiastical person, according to his
Laws, and none otherwise, 27 Hen 8. chap. 20.*

needed

needed for Tythes, Proviso was thought as fit to be added, that it should obtain but till the promised reformation: In the mean while time slipping away, and little or nothing done in the business under nor after Parliament, there was need to have the power (1) renewed for longer date, which was done once and again, and so at length for the whole (2) time of the Kings life. K. Edw. 6. also (3) continued it for three years in his time, All repealed by (4) Queen Mary, but revived by their (5) Maiden Sister. The fruit I find no less then the work in some sort done, and published in the Queens time by J. F. but reprinted about ten years since, under the title of *Reformatio legum Ecclesiasticarum ex autoritate Regis Hen. 8. inchoata, deinde per Regem Edw. 6. protracta ad antiquae, &c. Londini 1640.* Where heed the title, It was but *Reformatio legum Eccles.* in what form soever the new Mint should have come forth made of the old metal; Not *Inventio, Rogatio, Interrogatio, Promulgatio* of any thing anew, but its very self, *Reformatio, Confirmatio, or Novatio*, a new setting out of what had been before: Not the sending for new Tables to *Athens*, or such godly and costly proceedings as the poor blind *Indians* must make, (rising from the flat level) if it shall please God at any time to give them repentance to the acknowledgement of the truth, that they may recover themselves from the snare of the Devil who are taken captive by him according to his will, To make their Native Ordinances square and fit into one building, as to the new teachers maintenance; Raising perhaps the tenth siece from the flock, the tenth lamb from the fold, the tenth sheaf from the shock by a costly devotion, and out of their Own creating unto him a new Right; But to revise and settle that which was, to consider the ways of taking up, remedy the inconveniences, remove the obstructions, and scoure the wheels upon which suits moved, still leaving the thing they found, they needed adde no more, but say, Those rights shall be paid that have been. This all they intended, a Reformation, not destruction, which would infer need of a new creation; Not to adde an apple or an aye more, as that Poet said, which I shall always account unjust (unless with much caution limited,)

(1) 27 Hen. 8. 15.

(2) 35 Hen. 8. 16.

(3) 1 & 3 Edw. 6. 11.

(4) 1 & 2 Phil & Mar. chap. 8.

(5) Elizab. 1. c. 1.

red,) and would not have done for God or man. Not for Religion, which needs not injustice, or that any be put out of his Right for Gods sake; And God be thanked, as things are, and the world has been devout heretofore and devoted, it needs not; Let but God and man have their Due, and Religion is well provided for. We may talk of raising more by fruitfull beneficence, and the good will of men shall move Mountains this way; But let the Law of the Gospel have but our equall justice, with discreet administration of that which is, and it seems not to want already what the world can or need do for its outward sustentation by what was done for it before our fathers were born. Well: this plotted Reformation as 'tis called, (to go on,) was as to the work to be performed, taken into four quarters, and each quarter again into as many Cantons, whereof every one had two Bishops, two Divines, as many Doctors of Law, and so many Common Lawyers, (contributing their powers and endeavours to study, act, and oversee,) and to perfect all. Sir *Walter Haddon* and Sir *Jo. Cheek* were to fit it with ornament for the setting forth, which they did representing it to the world, (and so it is now to be seen,) dressed up in a very fair Robe of curious Romane language: As to Authority published it was with two Manifestors of the two Princes, willing it (1) to be studied and followed in Universities and Courts, 'tis hard to give the reason why it was not; All which was needfull to know, that we might infer of what power and authority is that we shall alledge. One (2) title is, *de Decimis*, having under it nineteen Chapters as followeth:

(1) *Stricte precipientes ut his nostris Constitutionibus vos omnes & singuli tam in judiciis quam in Gymnasiis utamini. Hen. 8. in Epist. prefata.*

(2) *Pa. 215.*

Cap. 1. *Decimas esse solvendas.*

Quoniam Dominus noster Iesus Christus hanc ipse legem sancivit, ut qui doctrinam inter homines conferunt, ex docendi labore subsidia vite metant, & ejusdem Domini nostri testificatione, Digni sunt mercede quicunque sunt in opere; Porro divinum jus scriptum bovi trituranti cum os obligari non fiat, nobis exemplum divina clementia repetendum est, & valide videndum, ne vel nimia nostrorum hominum avaritia vel negligentia fiat ut Ecclesiarum nostrarum ministris

justi & convenientes fructus ex sanctissimorum occupatione munerum non suppeditentur.

Cap. 2. *Decime prædiales quo modo solvi debent.*

Igitur auctoritate nostra constitutum sit, ut omnes singulique subditi nostri, locis & temporibus designatis & legitimis, decimas omnium rerum ex prædiis proventuum ministris seponant, siue fenum sint siue fruges qualescunque quorumcunque locorum, siue Crocus, siue Canabis siue linum, siue sint olera vel arborum fructus, &c. and so on to the exactness of the Pharisee to tythe All. Of Mills, Turves, Coles, Quarries, Pastures, (Agistment cattle I think they mean,) the breed of Cowes, Swine, Sheep, Mares, Swans, Hens, Geese, Pigeons, Conies, Deer, Fish, Bees, &c. Revising and expounding the Act of Parliament a little before made and approving it. But because the rest at large may take up too much room, therefore take but the Quintessence as it were extracted in the Contents of the Chapters.

Cap. 3. *Animalium decima annua quomodo juxta numerationem solvatur.* How the tenth shall be reckoned.

Cap. 4. *Divisio decimarum qualis sit.*

Cap. 5. *Decima rerum alienatarum quomodo recuperetur.*

Cap. 7. *De jure Vicariorum.*

Cap. 8. *Quando minister ex proventibus Ecclesiæ alii non potest:* Directing and counselling to all lawfull means can be thought on for augmentation.

Cap. 10. *De decimis colligendis in aliena parochia.*

Cap. 11. *De locis qui sunt à decimis liberi.*

Cap. 13. *Decime prædiales & personales quomodo solvenda.*

Cap. 14. *Solvendas esse decimas personales.*

Cap. 15. *Proprietarii quomodo decimas solvent.*

Cap. 16. *Decimas utriusque generis solvendas esse, sc. both prædiall and personall, if they arise due from the same man.*

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Cap. 17. *Causa decimarum inter ipsos ministros non progredietur.*

Cap. 18. *Consuetudo non solvendi decimas invalida sit.*

It might have been convenient to have represented here a full transcription of these things; but there is intimation where they may be had for use, which may be enough, where Brevity is studied. These Provisions of a Law shew clearly what the state then meant, as to Reformation, and even in this particular (if the purpose of the statute had been obtained for abolishing the old Canons,) and how inviolable the right of Tythes should have been. Then by their profound wisdom and discreet piety, which is also better seen by account from these public consultations than any private informations. The results they were of a severe and searching reformation, wherein as many stones had been moved (hoping thereby to settle others) as in any tumbling Age; and for the distressed Church what men durst do, if it had been judged convenient, needs no other demonstration then what was done: But profound wisdom joyned with much piety, and a conscionable regard (proceeding in the fear of God) not to destroy what they meant to reform, or to purge out corrupt humours to the death of the patient, made them soberly carefull we see, and tenderly jealous not to meddle too far here, and for fear of darkness over all discreetly advised to let none of the oyle be medled with that kept the Parish Lamp burning, but rather gave hope of adding more where need was, (with encouragement to bring it in,) setting open a door to let in other supplies of needfull expence for these Lamps dispersed all abroad, if God should so move the hearts of those that loved the Tabernacle and the light thereof, to bring any offering; To strip all having been a thought of such horrid injustice and barbarous impiety, joyned with Impudence (as to Religion) and imprudence into the bargain, that in likelihood truth might have been in danger of perishing from the earth by this time, and according to ordinary dispensations of Providence, we have now had little enough of Law or Gospel to take up consultations for the maintenance of

of, by that the Bible might have been near a stranger, if this had prevailed : But into their soft and tender bosomes, by the Grace of God, such thoughts had not leave and power to enter.

Why the tree thus planted hath not been known to bear fruit, or this new body thus framed, not received to be practised by, is, I said, hard to guess; the best reason I can think of is for want of Parliamentary allowance and subsequent confirmation, for nought else see I wanting : yet as strange that what a Parliament had appointed to be done, and being done, and accordingly, should not have therewith what strength it could give. But so it has been, a dead letter hitherto, onely living in the good wishes of knowing good men, that it were quickened to full life, and the least Ecclesiasticall piece (I call it so in regard of the *materia prima*, out of which it was made, the end whereat it aimed, the things it directs about, and its distinct standing off from the more common or secular,) that, of this kinde, our Common-wealth hath afforded : Not unfitly reduced to this head of Ecclesiastick, whose proceedings have been such by vertue of due power throughout this business, that it needs no protection of Hyperbole to excuse that all have either liked or willed ; Kings, States, Parliaments, Judges, Lord, Laws, not sparing their vote of approbation, (to this particular still I mean) and all that have, have looked on either to allow or confirm. With this one intimation more I close up the point, that whereas this new body is not yet it seems authorised perfectly, till it shal be, All the old (including those also I made use of before) are in force by a concluding Proviso of that first statute (25 Hen. 8. 19.) where the whole business was started. The words are these : **Provided also, that such Canons, Constitutions, Ordinances, and Synodals Provincial, being already made, which be not contrariant nor repugnant to the Lawes, Statutes, and Customes of this Realm, nor to the damage or hurt of the Kings Prerogative Royal, shall now still be used and executed. as they were afore the making of this Act till such tme as they be viewed, searched, or otherwise ordered and determined**

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of by the said thirty two persons, or the moze part of them &c. according to the tenour, form, and effect of this present Act. But this not yet done, and therefore all the former Canon yet of force till, &c. and that by this Authority.

C H A P. XXI.



AND hitherto then upon the proper Stage: Let us next look upon the lookers on, and see whether the Neighbour secular powers have either not looked this way, or said nothing, or not in allowance of what there: The Church impowered as before, hath acted as hath been seen, to a full and fast determination

of Right according to what she had in Commission, (or if she exceeded or went too far, was checked, as hath been shewed also:) But now hath the secular state added no collateral strength, to connive at least, and more at what hath been there done? Surely so: As they have done their own business, Hers also having been taken in by the by, sometimes in direct assertion, oftner by glance and occasionall reflexe, but by supposition constantly ever; That supposition also often expressed, as uses to be in collateral, not purposed mention of things, but never but understood and meant, as may be known by the evidence of things, as they have been done, and are left remembered; Their very (1) silence (if nought else were) implying consent, and suffering the Ecclesiasticall to continue meddling with things of Temporall worth, and not forbidding, being strong evidence that they did allow. Sometimes indeed the transgression of limits hath been questioned, and this the true ground of All Prohibitions

(1) Sub factis
autem moraliter
veniunt & non
facta considerata
cum debitis cir-
cumstantiis. Sic
qui sciens & prae-
sens tacet, consen-
sere videtur, nisi
circumstantiae o-
stendant quo mi-
nus loquatur, me-
tu enim vel alio
casu impediri.
Gras. de Iure Bell.
l. 2. c. 4. §. 17. 5.

hibitions, when the Church would meddle of things of

(1) lay fee, as the general word was, *de rebus tangentibus Coronam & dignitatem nostram*, for then the King would forbid that extravagancy, and stop the proceeding, as reason he should: But if keeping the due bounds, and not going besides the nature of allowed businesses, in *spiritualibus & annexis*; Now the Jurisdiction it self was never questioned, but things reputed immoveably firm that had their determination here, and the watchfull eye of a jealous neighbour either spied nothing, or said nothing, (and in that mu h:) or if any thing, by insinuation, All was well; *Hucusque*, and contentment there should be no Prohibition.

(1) Regulariter verum est, quod iudex Clericus cognitionem non habet de Laico feodo alicujus. *Bras. Don de Except. cap. 12. fol. 3.*

Reus illis Iudicibus Ecclesiasticis saluten. Prohibeo vobis ne teneatis Placitum in Curia Christianitatis quod est inter N. & R. de Laico Feodo predicti R. unde ipse queritur quod N. cum trahit in placitum in Curia Christianitatis coram vobis, quia placitum illud spectat ad Coronam & dignitatem meam. *Glanvill lib. 12. cap. 21. & vid. cap. 3. u. Traicté de Except. cap. 3. & 4. vet. for. Ebor. lib. 6. cap. 37. fol. 5. & alibi pagin.*

But to come to some particulars, having secular and more immediate Royall influence, (in giving of which I doubt not but the performance of promise shall farre exceed the measure of my undertaking, or reasonable expectation, all things considered, and that the proper Repository of such things from their nature is elsewhere :) and I begin with the great Charter, one of the most Authoritative Instruments, and solemn sealed and proclaimed deeds and Laws that our State has, or the Lawyers themselves know where to seek for. The beginning thereof is this, *Edward* by the Grace of God King of *England, &c.* We have seen the Charter of the Lord *Henry*, sometime K. of *England*, our Father, of the Liberties of *England* in these words: *Henry, &c.* which we confirm.)

Chap. 1. First. We have granted to God, and by our present Charter have confirmed for us and our heires for ever, that the Charch of *England* shall be free, and shall have all her whole Rights, and Liberties inviolable. We have granted also, and given to all the Freemen of our Realme, for us and our heires for ever, these Liberties, &c.

This is a little more emphaticall in the Latine, which for the better countenancing both of the testimony and the thing,

(1) Sect. 1. 8. Jur.

(2) That is, That all Ecclesiastickall persons shall enjoy all their lawfull Jurisdictions, and other their rights wholly without any diminution or subtraction whatsoever, Cook Instit. 2 p. 3.

(3) The Council of Echani had flyed there before Deo debita Iura. cap. 1. in Spelm. Concil. pag. 57. and K. Knout likewise in his Laws, cap. 8. in Lombard. Archai. pa. 101. And before either, K. Alfreds League with the Danes: Dei Rectitudines. S. Elm. pa. 377. The whole face and condition of things represents it self such, that if any thing were, These were now Rights.

(4) Pulton p. 143

I choose to represent from a fair Manuscript in the publick (1) Library of Oxford, where thus: *Imprimis concessimus Deo, & hac presenti Carta confirmavimus pro nobis & heredibus nostris imperpetuum, quod Ecclesia Anglica libera sit, & habeat (2) Jura sua integra, & libertates suas illasas. Concessimus etiam omnibus liberis hominibus, &c.* This is that Charter in the ninth Chapter whereof is confirmed the Charter of the City of London; in the fourteenth, **That none shall be amerced unreasonably, but salvo contentemento**, as he may be able to bear; in the twenty ninth, **That no man shall be outed of his Freehold but by course of Law**; (so much stood upon formerly, lately, and justly, and ever to be stood upon:) Every line whereof might have been written with some of the subjects bloud it cost; and in answerable price of worth containeth some piece or other of a firm wall to keep out Invasion, and hindering will and power gotten strong from entring upon and trampling downe the peoples Libertie; Wherein note two things granted to the Church, *sc.* That she should have all her 1. Rights, 2. Liberties: Those Rights, Intire: Those Liberties, Inviolable. What were first her Rights? (3) Tythes, no question: Even then: generally due, and universally paid, and so for a long time had been: There needed no more then, or the Ages before, but to prove the land in the Parish of Dale, and the Tythes were cast upon the Church of Dale without any Evalon; And this so true and known, that there is none from the information before or other acquaintance with the state of things as they were, truly informed, but must grant as much as I say without hesitation: And these rights were also granted Intire. Next, what were her Liberties? A volume were here little enough, and I had once thought of laying together Many. But to our present purpose let a few Acts of Parliament expound what one privileged at least was. In 18 Edm. 3. there is a statute for (4) the Clergy, and it was granted in regard of a Triennial dieme given that Martiall Prince to further him in his Wars for France. In the sixth Chapter, whereof is mention of some Justicers appointed to the impeachment of Ecclesiastical

call Jurisdiction, (of (1) Tythes among other things, why may we not well understand ?) and is against the Franchise, this Statute says, of the Charter. Let the words speak their own sense. *Item, Whereas Commissions be newly made to divers Justices that they shall make inquiries upon Judges of holy Church, whether they have made just process or excessive in causes testamentarie and other (causes) decimall, as notoriouslie doe belong hi her as testimentarie, a hundred pzoofs are for it* (yet) notoriouslie pertaimeth to the cognizance of holy Church, the said Justices have inquired and caused to bee indicted Judges of holy Church; in blemishing of the Franchise of holy Church, that such Commission be repealed, &c. See here what Franchise is in part, *sc.* to have Ecclesiastical Jurisdiction free, proved by that to disturb it is a breach or blemish of the Franchise. Next take another gloss in the plain text of 1 *Rich.* 13. where (2) *The Prelates and Clergy of this Realm do greatly complain them for that the people of holy Church, pursuing* (3) *in the Spirituall Court for their Tythes* (there is the Jurisdiction and this particular asserted) *and their other things which of right ought, (there's more then possession, Due,) and of old times were wont to pertain to the same Spirituall Court, (there's continuance of time, or prescription) and that the Judges of holy Church having cognizance in such causes, & other persons thereof meddling according to the Law, be maliciouslie and unduly for this cause indicted, imprisoned, and by secular power horrible oppressed, &c. against the Liberties and Franchises of holy Church: Wherefore it is assented that all such Obligations shall be of no value, &c.* Here another statute interprets what Liberty and Franchise is by that the clogging of Ecclesiasticall Jurisdiction, in this matter of Tythes was a breach of that Franchise; and so after when the *Cisterians* endeavoured to exempt their *Ferminous Lands* as well as their own from paying Tythes, that due power could not fetch them in, this was again against the Franchise, as (4) complained in Parliament, 2 *Hen.* 4. 4. And lastly, a (5) National Council represented as one of their grievances at

(1) The knowledge of all causes testamentary, causes of matrimony and divorces, rights of Tythes, Oblations, and obventions by the goodness of Princes of his Realm, and by the Laws and Customs of the same, appertaint to the Spiritual Jurisdiction of this Realm, &c. Stat. 24 Hen. 8. 2.

(2) *Id.* p. 100.

(3) That this apprehension may not seem a mistake, this very Chapter I have alleged heretofore to prove that the proper scene of trial of tythes is the Ecclesiastical Court; by M. F. l. b. k. in his parallel par. 1. Dial. 1. of 66.

(4) Alleged hereafter.
(5) The Annals of Burton edited by M. Sellen of Tythes, l. 14. p. 419.

London,

London, 21 Hen. 3. The over-lavish use of the *Indicavit*, whereby the Kings Judges would first determine what tythes were due, to what Church, and this was *in Regno Anglia in praudicium libertatis Ecclesiasticae*. Which things may together shew fully enough, what the breach of Franchise was, and by consequent what the Franchise it self, by the best which is publick interpretation: Whence also likeliest this was the meaning of the Grant: That the Church have all her Rights, that is, Tythes (with others) intire: and all her Franchises, that is, Jurisdiction, (Decimal, as for other things, to bring them in,) Inviolable; no less then which could be meant by any likely construction. Or otherwise Thus; and the strength of this title may here have received two ways augmentation. 1. As Tythes were a Right and so warranted and intended to remain such. 2. As they came within the compass of Ecclesiasticall Jurisdiction, which, as they were given before, and any Law had assured them, (as many had doubtless.) This was then here allowed to bring them in: And so were it personall or prædiall, lamb or wool, sheaf or heap, must not now then have been withholden, but were due, and must be paid, yea, by the great Charter, yea, while that Charter was in force, could not be denyed, for that herein were confirmed, to the Church all her Rights (Tythes) intire, All her Liberties, (Jurisdiction, Decimal) inviolable; and Wrong must have been to deprive her of those Rights, (of these Tythes,) of this Franchise, (of that Jurisdiction) Or otherwise lastly, Thus: Let but the Jurisdiction, that Liberty, be supposed to have remained, and this would bring in all the rest: For, let the Church but have been heard to speak out in that which some accounted then doubtless as things were (in a qualified sense) the voice of God, which was the voice of the Law, and this could have spoken out nothing but roundly and home for Tythes: For they were Due, then Due, and so Due: Let that dead letter be then but thus have been quickned by lively sentence, and the Law be heard speak out according to truth and righteousness, and the voice could be nothing else but for desired Justice, Truth, and Them.

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Of what estimation this Charter yet is and duly ought to be with all the good people of *England*, much need not be said: *Magna fuit quondam magne reverentia Chartæ*, as one said, It used to be looked upon with no other but an eye of reverence. It cost the subject both wealth, and treasure, and blows, and blood, before it could be obtained; And after at the rate of the lives of thousands, and by the prudent and successfull intercession of some Church-Ministers (who perswaded and prevailed with the King to pass it,) as well as any other; it was granted, it had the most (1) solemn present confirmation that it now appears any publick Instrument of this State ever had. It has had (2) more then 30 other confirmations in Parliament since: For, for divers (3) Kings Reigns after successively, till by repetition that reverence before spoken of, was bred and rooted in all mens hearts toward it; one of the first things still done in that most honourable meeting was to confirm This, and the Charter of the Forest; with no less regard of care and love, then in Councils and Synods had been wont to be shewed to the doctrine of Unity and Trinity in a Deity, by keeping the belief thereof in faith & fresh memory by some of the first Articles. In present, severall draughts were (4) taken forth, and the exemplifications sent under the Great Seal to the great men of the Realm, one of which yet is, (or lately was) at *Lambeth*, and (5) after renewed under the same Signature again, as well to the Justices of the Forest as to

(1) The Archbishop, Bishops, and the rest of the Prelates pontifically apparelled, pronounced that curse with tapers burning, which when they had thrown away upon the pavement, where they lay extinguished and smoaking, the King having laid his hand on his breast all the while, Iware to keep all Liberties upon pain of that execratory sentence, As he was a Man, a Christian, a Knight, and a King anointed and crowned. *Speed Hist. li. 9. c. 9. fol. 82.* What the curse was, who was present, against whom thundred, that should either break it, or bring in another, or observe it being brought, with the signing and sealing, may be seen in the old Edition of the Statutes, printed 1543. at the end of *Hen. 3.* and in *Flet. lib. 2. cap. 43. pa. 93.*

(2) The Lord *Coke* has computed to thirty two (in the Proemio to *Inst. 2*) I believe more; *sc.* twice in *Hen.* the thirds time: that is, *Anno 9.* at Westminster, and *Anno 52.* at Marleborough. *cap. 5.* Also 25 *Edw. 1. cap. 11.* 28 *Edw. 1. cap. 1.* 1 *Edw. 3. cap. 1.* 2 & 3 *Edw. 3. cap. 1.* 4 *Edw. 3. cap. 1.*

Memorand. And beside these ratifications of the Charters, and thereby the Churches Rights and Liberties in them, Tythes (in the way shown) with the rest; There were many distinct Ratifications in severall either Charters or Clauses besides of the same Churches, Rights and Liberties. As in the Statute for the Clergy in 27 *Edw. 3. chap. 1.* in 50 *Edw. 3. chap. 1.* 1 *Rich. 2. 1.* 2 *Rich. 2. 1.* 3 *Rich. 2. 1.* 5 *Rich. 2. 1.* &c.

(3) *Sc.* in *Edw. 1. time:* *Edw. 3. Rich. 2. Hen. 4.* till about the end of *Hen. 5.* Where it occurs often.

(4) *Cook Vbi Supra pa. 4.*

(5) 25 *Edw. 1. c. 8*

(1) Ib. cap. 3.

(2) Ib. cap. 2. and
M Charta ca. ult.
Quæ contra jus
sunt debent uti-
que pro infectis
haberi. Reg. Iur.
Canon. 64

(3) Authoritate
Dni, Patris Om-
nipotentis, Filii,
& Sp. Sancti, &c.
Flet Vbiſup.

(4) And that all
Archbishops and
Bishops ſhall pro-
no, nor the sentence
of Excommunica-
tion against all
those that by word,
deed, or co ncell,
do contrary to the
ſaids Charters,
or that in any
point break or undo
them. And that
the ſaid offences be
twice a year de-
nounced and publis-
hed by the Pre-
lates as aforeſaid
25 Edw. 1. cap. 4.
With another clause
at the end, so bind
things as fast as
may be) and
Excommunication
as counced against
those that ſho ld
130 are the seven

the Sheriffs and other publik Officers, and to all the Cities of the Land, with Writs to have them published, and order to (1) every Cathedral to read them twice every year to the people. And not onely their Effata or most revered contents equalled by Parliament to the Oracles of the Common Law; But whereas *Judicia* are *Iuris dicta*, and should binde if any thing, yet all sentences given in Court (2) contrary hereto, are declared null, and of no force, and that by sentence of Parliament as soon as they are given. In present all were Excommunicate that were infringers thereof, even with severe and bitter devotion; all the (3) powers that men on earth could devise or implore from Heaven being used to procure and work terrour; And for the future, it was appointed (4) this Excommunication should be renewed twice a year in every Cathedral, and (5) Proclamation twice as often as that made by the Sheriffe in his County-Court (ſc. after *Michaelmas*, *Christmas*, *Easter*, and *Midsummer*.) Three substantiall men being then chosen to be Justices by vertue of that Commission to inquire of transgressions, and meerly by vertue of that Writ without any other power, they were such Justices. 'Tis, in short, (6) the cream and quintessence of the whole bulk of the Politicks of our Nation, the Charter of the peoples right, the hedge of their property, the fence of their liberty, the strength of their security, and the chief bottome of our Laws: Which in the dawning of our late troubles about twenty years since, had the violation thereof, all know, looked upon with so jealous an eye, that

Articles of that Concession, (of which that was the fourth.) In the Name of the Father, the Son, and the Holy Ghost &c. in the said old Edition of 1543.

(5) Artic. Super Chart. cap. 1. 28 Edw. 1.

(6) Iam adeat annus salutis humane 1226, & nonus cum regnare cepit Henricus, quo anno Concilium Principum est habitum: Eo in Concilio de Re. res passim & principum sententia, non parum multa privilegia, ordini sacerdotum, atque reliquo populo irrogata sunt, multæque leges, quas Reges qui secuti sunt, ita approbaverunt, ut inde bona pars juris collecta sit, quemadmodum extat in eo libello cujus inscriptio est, Magna Charta, & altera, vulgò de Foresta, id est, de seranis salubus. Po. yd. Virg. Angl. Hist. lib. 16. p. 292.

It was for the best part declaratory of the principall grounds of the Fundamental Laws of England, and for the residue it is additional to supply some defects of the Common Law, &c. Cook Instit. 2. in Proem. pag. 2. So of King Johns Charter; the Barons reached him, — Schedulae quæ ex parte maxima le. et antiquas, & reguli consuetudines continebat. Marth. Par. ad an. 1215. p. 244. And see R. Twissens, Prefat. ad Leg. Guil. 1. & Hen. 1. p. 157.

nothing

nothing more egged the people to inforce the Petition of Right (to regain the breaches made whereinto was a part of that Petition,) then a fear they had wrong done them in this their chiefest and choicest love, which let be but read, and it alone will shew what estimation quiet subjects had thereof in those calm times, and what advantage has been made of both since, all know. A Volume were here again too little: and yet the beginning was plainly, fully, and home for these Rights among other. And the Concession of them, which is more, made over, as 'twere, into another world, into the (1) *Hands of God*, that man should not dare recal or lay his hand upon that was so, and *To God was Given. Concessimus Deo & hac presenti Charta nostra confirmavimus pro nobis, &c. quod Ecclesia, &c.* Whereas the peoples Liberties were given only into their Own hands. What will, if this will not, preserve them intire as they were given? What will render them inviolable, if not the sacred Omnipotent hand of the (2) most High God, to whose protection, power, and safeguard, as well as honour and glory, they were by our Ancestours (who thought themselves awake in the business of the Charter) commended? and they thought to equall it with the highest offence, that of the Gyants heretofore making attempts against Heaven by their daring presumption, if any should at any time presume to rob them from That Hand to *Which* they were, and *So* given. Many yet alledge and take a part: The ninth chap. in (3) behalf of the City of *London*: the twenty ninth for a Legall triall of Tythes; and the Petition of Right joyned thereto for liberty and property; that none be outed of his Free-hold but by due process of Law, and many exclamations, bitter sufferings, hard imprisonments have been, perhaps ought to be rather then lose their childe's portion, in that great Charter, the enriching due Birth-right of every Englishman. But is not one mans Right as good as anothers? Does not any injury sit to as much discontent, irksomness and wrong upon the galled back of one sort of sensible persons, as it doth of another? Or, may not I cry for my Childe's part as well as my Brother? The despised Minister of Jesus Christ. Can he have no wrong?

(1) When anything is granted for God, it is deemed in law to be granted to God; and whatsoever is granted to his Church for his honour, &c. the maintenance of his religion and service, is granted for and to God. Quod datum est ecclesie datum est Deo. Cook Instit. a. par. 2 upon this Charter.

(2) Semel Deo dicatum non est ad usus humanos ulterius translegendum Reg. Jur. 51.

(3) Whose old liberties and customs are there confirmed: and likewise of all other Cities, Towns, Burroughs, &c.

1 Pet. 5. 2.

(7) Rom. 13. 13.

(9) Col. 3. 6.

(12) 1 Pet. 4. 3. 4.

Or has he no right ? Or is not he perhaps a Christian, an English man, a Man, as well as all his kindred, that any private spleen, envy, malice, greedy covetousnesse, self-love, or other wrongful and injurious passion should work in the bosom of his fellow-Christian and Neighbour (who yet loves *His Own* well enough, and can be content to stretch all his powers to make the most and best of it) to wish Him out of His, or endeavour, if it be in his power, to put him out, Quarrelling with him to rest contented to see his name stricken out of the Common Fathers Will; and he shall be yet in more danger, if he strive or cry, or do any thing but sit still and submit, and be quiet while his part of the Charter is taken from him! May not this very same evidence, if the poor Preacher and Servant of Jesus Christ, who taketh cure of souls for his Master, *feeding the flock of God committed to his charge, not by constraint, but willingly, not for filthy lucre, but of a ready minde*, have any part therein, be as honestly, reasonably, piously, safely, and Christian or English man-like pressed home, and contended for earnestly in his behalf, as for a mans right, a mans estate, a mans property ? Perhaps a single, simple, meer natural man, that as such, by any thing he possesses is bound to little, that he knows of, save to make himself ready, eat and drink, keep himself quiet or merry, expect the quarter or half years day, tell his rent when it comes in, and in the mean while is at leisure for Any thing: To sport and play, game and riot, perhaps for (1) *gluttony and drunkenness, chambering and wantonnesse, lust and envying*; and other such things (2) *for which the wrath of God is wont to come upon the children of disobedience*. For such are known to live among us and enjoy their dear Own without disturbance, (which is worse, in Christian Communion too,) and relinquishing neither hopes of Law, nor Gospel, (not our Law I mean,) to see the streams of *Paetolus* flow, their heaps of wealth come tumbling in on every side, which they abuse (God forgive them) to be the fewel of their sins, to keep their vices and iniquities not onely burning, but flaming in the sight of the world, (3) *Working the Will of the Gentiles, and walking in all lasciviousness, lusts, excess of wine, revellings, banquet.*

*Banquettings and abominable idolatries, wondring that others (who by the Grace of God have escaped the pollutions that are in the world through these lusts, and old things are past away with them, all things are become new) run not with them, as formerly, into the same excess of riot, speaking evill of them for it, as the Apostle says: And shall these I say, do thus, and no man molest them, or trouble them, or question (as God forbid they should) for craving, having, and mispensing what they have Civil right to, while the (1) Labourer is kept short of his hire, (2) The mouth of the Oxe muzzled that treadeth the mome, and kept short of his due allowance; Gods Minister onely is pittanced of what may keep him alive and honest together, and they that take themselves for good men; doubt whether they may subtraçt from him his part of the Charter. He is, I aver, He is one of the most Necessary men in his Parish, for discharge of duty he would soonest be missed of All, if he should be absent; As great expectation is of Him while he is there, and there is neither Free-holder nor Copy-holder, Yeoman, Gentleman, or scarce Any other, who in sickness, absence, exclusion, or so, would be more missed of the Neighbour-hood, of any of whom they expect no more then what duly they have of him, and more: And what wisdom or equity were it then to chuse out Him to be robbed at the root, despoiled of his right, shrunk in those sinews must give all his designs or godly good works, life, power and motion in this world, and desire his means of living to be withholden from him due by Law, While other that would very likely do less good with it, certainly have less duty expected of them for it, have enough and to spare, yea, *Fruges consumere nati*, men born onely to live and spend, have plenty, that nor own, nor pretend to own any necessary, fitting, honest, manly imployment to the furthering of that common good, whereof they reap the chiefeft benefit, But (like drones) suck the sweet, and make sport with the sweat of other mens browes, wearing Mannours on their backs, and pouring Farms down their throats, swimming in golden Lard up to the Chin, as he said, live at ease in Sion, neither Fish nor Flesh, having nothing of*

Human

(1) Matth 20 8.
chap 10. 10. Luk.
10. 7. 1 Tim. 5 18

(2) 1 Cor. 9. 9.
1 Tim. 5. 18.
Deut. 25 4.

Human or Christian, Lay or Ecclesiastical, Magistrate or Officer, publick or private, charged or they think fit should be charged on their account to God or man, Church or State. I speak not this, that they should be deprived of any thing is Theirs, or to stir up discontented fault-finders against them, which I assure my self cannot be attempted without sedition in the State, or sin to their souls who should be so troublesome; Let every Swine have his own dunghil, every man have his Own, as well as do (1) *what he listeth therewith*, as the Scripture says; if He mis-spends, (2) God shall judge: But comparatively, If These, then Those, if They have, and none subtract or deny, how much less, or with equall necessity, not from him that (3) *laboureth more abundantly then they all*, as the Apostle speaketh; and in another place is (4) *worthy of double honour, labouring still in the word and doctrine*. God forbid any should have wrong, or not their right, be it much or little, and Who or Whatsoever: But is this sort of men Onely inconsiderable, to be shut out of door when right is distributing, and they alone are Chidden if they ask their Due, or expect their Right from the Petition of Right, and the every man else enriching Charter: *Hec quòd literulas stulti docuere parentes!* Nay, will they not blame their calling that deprives them of common equity, and shuts them out from the open Hall of Justice, and they may not claim their due in Every ones Inheritance? It grieves me to consider, and I wonder it should be so: The same men that urge those publick Concessions so earnestly, and would suffer more rather then lose any of their little shares in this universal Grant, yet cry out against Tythes without moderation or measure, take on and complain as of a burden insupportable, and when Their own parts are taken out, They may not be restrained of their liberty or abridged of their property, (God forbid they should;) Other mens right or liberties, they may be stamped under feet, their Dues are inconsiderable, no dear Own by their Property. I hope and believe they have been hitherto but mistaken in judgement, and thinking Tythes to be no other but the impositions of some later statutes, or the usurpations of the Consistory;

(1) Mat. 20. 15.

(2) *Who art thou that judgest another mans servant? to his own Master he standeth or falleth* Rom. 14. 4. And, *Why dost thou judge thy Brother? or, why dost thou set as naught thy Brother? we shall all stand before the judgement seat of Christ. For it is written, As I live, saith the Lord, Every knee shall bow to me, and every tongue shall confess to God. So then every one of us shall give account of himself to God,* ver 10, 11, 12.

(3) 1 Cor. 15. 10.

(4) 1 Tim. 5. 17.

no wonder or blame they would have tyranny abolished, and exactions removed, that every man may enjoy his dear Own, and no man usurp upon his neighbour in any the smallest matter: But would they consider what deep and settled, and allover-spread radication these claims have in all the Civil laws of the land; How the Parliament allowes them, the Petition of Right involves them, the Canon gave them, the Charter confirmed them, the Common Law set them up; and all the Politicks of the Nation combine and conjoyn their strength for their legal Dueneſs, as of Any thing: Could they look (past some single Order or Act,) into the depth of *that diffused and far-spredding Rule and Giver of all Right with us, the Sovereign Law,* and there finde that what gives all men right in this Nation, gives here with as undoubted assurance, and a manifold accumulation of more strength and evidence, They would then, I trust, change their notes, or as the word uses to be, sing us another song; They would not betray their discretion to such necessary disgrace as must follow upon their destroying with one hand, what but now they had set up with the other, nor would they take away with their left what they gave with their right; but Right, and Charter, and Liberty, and Property, should be all of a sort, and one mans claim of any thing from or by any of Them as good as anothers. Could they espy (that which is) an involved title in these publick evidences they contend for, and these Dues to be as certainly implied in the Charter (as they are) as their own inheritances; They would no doubt soon change their English mindes in a contrary way to the new-instructed (1) Islanders of *Melita*, settling for truth and no longer for error, (*Father forgive them, I doubt they have not yet known what they doe,*) Hence ceasing their clamour against their neighbours, as those would have no wrong done to themselves, and accounting it a most unreasonable partiality, not to be owned by those that are in any degree among the lowest sort of Honest men, to pick out that which is for their (2) turn in a publick evidence, and throw away the rest, or make that they have got of power to disanul it. Mr. Petitioner, whosoever thou be, I name None, but

(1) Acts 28. 6.
(2) *Th. ſe be thoſe
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Realm Co. Inſt.
2. pa. 1.*

The Civill Right

but mean All, and in love and friendliness bespeak & petition Thee : *A. B. C. D. E. F. G. H.* or whosoever thou be that lovest the Charter, the Petition of Right, or Right it self, hearken ; And if thou be a Christian and English man, be perswaded hereafter to proceed upon more equall terms, and from a better information of judgement, cease to pervert the right words of the Law ; Whatever thou hast done heretofore in the days of thine ignorance, now taking no other course but what is justifiable by the rules of common Honesty. Could I but hear you once resolve, that every man should have *his Own*, and Law should be the rule of that, your own chosen Instruments should be the evidences, and not any just mans plea shut out of the Court, be it what, or of, or for whomsoever, I would not then doubt to have gained of your honesty and simplicity a strong patronage of that righteous cause now in ignorance and by mistake ye go about to suppress, and that ye would appear valiant, yea suffering Champions for that equity and right, ye now seem resolved to take pains, if not to suffer, rather then permit any longer those that have right to enjoy. Let but a love to truth, and constancy to your own principles be with you, and I have enough, I petition, I ask no more. Nor do I altogether despair ; As great changes have been in the world, and faces about from West to East, quite contrary to what was once persecuted or prosecuted in ignorance. The two Theeves shamed not to confess the truth at last : (I equall you not in injustice, or meaning wrong, but God grant you and I may equal them both in Turning from out our evil ways, passing from death to life, repenting our hidden sins, and converting from darkness to light, from the power of Satan unto God.) *Martha* loved much after, who before had done that needed much forgiveness. *Matthew* the cheating Publican, turned upon admonition a Disciple and Apostle ; And is not *Saul* among the Prophets, *Paul* among the Teachers ! Good men and true, Remember chiefly that last example : Wonder, but Believe it was even so ; Inquisitour *Saul* is turned a zealous Professour, and he that was a busie Persecutor, now as active an Evangelist and Professour : When Christ, who is the

the true light, shined to his soul with awfull beams, he fell down, and recanted, and repented his (1) zealous ignorance, and though he had received Commission (*Acts 9. 2.*) from the highest then of Priests and Powers, yet God caused him to revoke all, and we have (2) *heard say*, (as the Jews of him truly,) that *He which once persecuted in times past, now preacheth the faith which once he destroyed: for which, men glorified God in him.* Why should the like be despaired of you? of whom I must go against mine own both hope and full perswasion, if I should say otherwise then that I believe ye have profited thus far, That ye love the truth. Ye mean well, ye will, (why will you not?) be fast men, and true to those great names of *Justice, Equity, and Righteousness*, as they shall be revealed to you, not to your own opinions, (frowardly persisted in) how plausible or profitable s'eever, and as new and better light shall shine, not be in love with former darknets? Be perswaded, ye may have erred: The Church has right, a Right of Tythes, a Civil Right, a Character Right, and will you yet go against your own principles, and deny other men that right your selves think fit almost to resolve to die for? Will ye not grant, what in your own cases ye ask, and refuse to give to others, what ye expect to receive your selves? shall they not have what ye will not be denyed? What Equity, Reason, or Conscience were this? Be valiant, be wise, be just, and constant, I crave no more: Or, if ye will not, (*striving to do to others, as you would your selves should be done unto,*) How dwelleth the love or law of Christ in you! How can you expect that God, who is a God of Wisdom, Justice and Truth, should evermore shine with the least ray of his favour upon any of your enterprises! This Apollrophe was needful: God lay it to your hearts. Remember, *there is a day appointed, when God shall judge the world by Jesus Christ*; and then if you should appear to have wronged his Messengers, despised his Prophets, or driven on any close unjust design (with success) of impoverishing and making a prey of their worldly weakness whom God hath intrusted with your souls; How would you answer this worst of wrongs? What put up in excuse of so aggravated injuries?

(1) I verily
Thought thou with
myself, that I
Ought to do many
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to the Name of
Jesus of Nazareth,
Which I also did
at Jerusalem, &c.
Acts 26. 9
(2) *Gal. 1. 23.*

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C H A P. XXII.



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(1) In Biblioth.
Bodl. Oxon. S. 1.
3. Iur.
(2) Pulton ps.
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(3) Instr. 2. ps.
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In (2) *Edw. 1.* time we have the noted Statute of *Circumspetti agatis*: made it seems, to restrain and keep within due banks some powers granted a little before to the secular Judges to curb in his Jurisdiction the Bishop of Norwich: (whose (3) name yet might be but as *A.B.* an *Individuum vagum*, applicable to all who had their due liberty in danger of being fettered, and indeed to them (4) severally it was directed:) *The King (therein) to his Judges sendeth thus greeting. Deal circumspetly in all matters concerning the Bishop of Norwich, and his Clergie, not punishing them if they hold plea in Court Christian of such things as be meerly spiritual; that is to wit, of penance, &c. Item, If a Parson demand of his Parishoner: oblations or tythes one and accustomed. or if any Parson do sue against another Parson for tythes greater or smaller, so that the fourth part of the value of the Benefice be not demanded.* This is so plain, nothing can be more: though the secular Judge might lend his hook to fetch causes to his Court in some doubtfull cases, yet for things meerly spirituall, or for tythes by name, This Law sayth, He may not. Which for better preservation (5) *Lindewood* has also in the Churches behalf taken into his Provincials.

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(1) *Ib. Pa. 663.*

(2) *18 Edw. 1. Pulton pa 70.*

(3) *But but for an example: The thing extendeth to all the Bishops of the Realm Co. Inst. 1. pa 487*

(4) *Rex enim misit certos Iustitios suos ad procedendum sub certa forma contra Episcopum Norwicensem & alios de clero sibi adherentes, quibus postea Rex scripsit ut hic habetur Gloss. Norwicensem Lyndeswood. de foro compet. l. Circumspetere.*

(5) *Ibid.*

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 (3) Instit. 2. pa.
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(1) Ib. Pa. 663.

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(5) Ibid.

for it being granted, which cannot be denied, from other assurances, both that tythes were due, and This would bring them in, in the grant hereof intire, is enough, the rest will follow. It seems some there were would then obtain a Prohibition to stop the wheels should properly move to Justice in this case, and when the business came to the Lay Judge, go no farther: So the Plaintiffe (was delayed, yea, denied right, and almost wrong, for he could have no sentence any way, for remedy whereof, it was ordered: That, (1) *Whereas Ecclesiastical Judges had often surceased, &c. by vertue of Prohibition, whereupon nothing done in either Court, Our Lord the King willeth and commandeth, that where so, the Chancellour or Chief Justice upon sight of the Libel upon instance of the Platintiffe (if they can see that the case cannot be redressed by any Writ out of the Chancery, but that the Spiritual Court ought to determine the matters) shall writ to the Ecclesiastical Judges before whom the cause was first moved, that they proceed therein, not withstanding the Kings Prohibition.* Plain, that in some cases (2) the other Courts could afford no Justice, and therefore of necessity must be a remission hither; so appropriate was the remedy and indeed cognizance and rule of Justice to this Court, that all the rest could not so much as hear; and that righteousness might not fail from the Earth, hither loyall subjects must onely come for it. To some time of the same Kings Reige is yet farther ascribed (3) this grant, that, (Where (4) *Tallage or aid shal be levied withon consent of Parliament. For (5) any thing purbayed to the Kings use without the owners consent; There.) We will and grant for us and our heires, that all Clerks and Lay-men of our Realm shal have their Lawes, Liberties, and free Customs as largely and wholly as they have used to have the same at any tyme when they had them best. And if any Statutes have been made by us or our Ancestors, or any Customs brought in contrary to them, or any manner Article contained in this present Charter, We will and grant that such manner of Statutes and Customs shal be void and frustrate for evermore.* With (6) order to have it read every year

(1) 2. Edw. 1.
Anno Dom. 1296
id. pa. 75.

(2) *And this is the very reason why the 12 Chap. of 32 Hen. 8. was made law, because Lay men that had use of all other Courts, could not come at their due tythes now seized upon them by any of those Courts, which made it necessary they should be enabled, to sue in the Court Christian, where onely they as were tried, and that was the thing there done, and the new indulgence there granted them, as appeareth by the Preface*

(3) Pulton, pa. 91.

(4) 1b cap. 1.

(5) 1b. ca. 2.

(6) 1b. ca. ult.

twice in every Cathedrall, and a curse upon the breakers. I infer: 1st. All Laws, Liberties, and Customes were here granted. 2. To Clerks as well as Lay-men. 3. Of the largest size or use. 4. In despite of any Law to the contrary; Then, 1. here be tythes, which were then due by Law: 2. the Jurisdiction of them, a Liberty, which would bring them in; 3. And so they were both due and must be paid, (taking in consideration of the Then state of things,) by vertue of the Law, and by vertue of this Law, for that herein were granted all Laws and Liberties. Remove to *Edw. 2.* and there we finde those are styled (1) *Articuli Cleri*, and so not like to afford nothing; but Englished, Articles (2) for the Clergy, and so like to afford something for them. The first thus proposes and resolves: **Whereas Lay-men doe purchase Prohibitions generally upon tythes, obventions, oblations, mortuaries. &c. The King doth answer, that in tythes, oblations, obventions and mortuaries when they are propounded under these names the Kings Prohibition shal hold no place, although for the long withholding the same, the monie may be esteemed at a sum certain. But if a Clerk sell his tythes gathered into his barn for monie, &c. then otherwise.** And if the Kings Prohibition should not lay any impediment, but things must be tried by the Canons, we know and are assured whether tended, and what that meant. But more particularly here observe, 1. That the power which is known would give them in, is here, without dislike mentioned. 2. Plainly allowed. 3. As to tythes by name. 4. Strengthened; By this that as in *Circumspecte agatis* no disturbance should be offered by the secular Judge impeading to proceed in their own way. 5. And all this by Parliament, Sending the trial where beforehand it was known how the business would go; And then, as if the supream power send a criminall offendor to the Bar of Criminals, knowing how the case will there go, looking on, permitting, and acquiescing in the sentence there to follow upon that sending; They more then seem to confirm and allow, whatever prove the issue; such interpretation may reasonably be made here of the remission of these cases, and the temporal power could not but be thought

(1) 9 Edw. 2. id.
pa 98.
(2) In the old edition of 1543.

thought to own the event, and what was done whether themselves sent for trial. The provisions were as strict as well they could to hinder extravagancy; for, as treading in the steps of the *Regia Prohibitio* before, if once the thing were never so little converted to seem temporal, Away with it presently, Grant it no longer protection here, but allow suit for it wheresoever; But if it remained, *spirituale vel spirituali annexum*, it self, As reason would and the nature of the thing required; the King says, the Law says, the Parliament says, and all, let the Church have her due; If it be to try these things and bring them home to her own house, let no envious in-croachment grudge her right, no not though by continuance of time the things have run so long, as they may seem to have degenerated into a Lay-commodity. *Chap. 2.* Also if debate arise upon the right of Patronage, and the Quantitie of the tythes do come unto the fourth part of the goods of the Church, the Kings Prohibition shall hold place, if that cause come before a Judge spiritual: Insinuating, (and the practise hath been accordingly) that if less then a fourth part, (or the Patron of both the same, for so it was,) it must be tried as before. And so *chap. 5.* where no Prohibition is to be had (as in the title) if tythe be demanded of a new Mill; And the text: Also if any do erect in his ground a mill of new, and after the Parson of the same place demandeth tythe for the same, the Kings Prohibition doth issue, &c. the Answer: In such case the Kings Writ of Prohibition was never yet granted by the Kings consent, nor never shall, which hath decreed that it shall not hereafter lie in such cases. And then let the Parson alone: His strength is, those Canons will do execution enough; *De proveniunt autē Molendinorū volumus quod decima fideliter & integre solvantur*, had (1) *Rob. Winchelsea* said before, then in

(1) Constit. provincial. tit. de decimis. cap. Quoniam proprietas.

Ayo, De una &c. Molendinorum, Venationum, Negociationum, &c. tit. eod. cap. Sancta Ecclesia. De prato, de aquis, & molendinis L. Edvardi Confess. cap. 8. cited before. De molendinis, & piscariis, & montibus. Constit. ut. cujusdam Episcopi, about Hen. 2. time, alleged by M. Selden, p. 231. De proveniunt Molendinorum, pisciarum, venationum, &c. Decret. Gregor. tit. de decimis cap. proveniunt. Of those forced by warres as well as water. Mandamus quatenus. H. Militem, ad solutionem decimarum de his quibus de molendino ad ventum proveniunt, sine diminutione aliqua compellamus, tit. eod. cap. 23. Ex transmissa. And, as of Merchandise or pradal, without diminution of expence, tit. eod. cap. 28. pastoralis officii.

force. *Integrè*, that is without diminution, the tenth dish, not the tenth penny, saith (1) *Lindewood*: And *memorand.* these (*Articuli Cleri*) and *Circumspectè agatis*, and some other had a clause to keep them inviolable by the late Parliament determination of 2 *Edw* 6. 13. in the end.

(1) Sc. sine diminutione, sic ut solvatur decima proventuum verè sicut proventus accidunt, &c. decima mensura

quorumcunque granorum molitorum ad commodum domini molendini vel molendinarii pertinentium; & sic non sufficit solvere decimam prout Molendinum transit ad firmam, quoniam in firma de verisimili non est verus valor, cum firmarius ultra firmam aliquid speret lucrari. Gloss. *Integrè*. cap. Quoniam propter.

Follows next *Edw*. 3. and here we have more: In every K. Reign almost somewhat, if but for recognition, and to shew that that peece agreed with the whole. As first, There had been over-lookers, as before, of the Jurisdiction Christian, who disturbed, and discouraged, (but they did but over-look and hinder, not absolutely take away; the thing remained, and hence proved.) Also some that pulled away a branch or bough rather from the tree, hindering by *Scire facias* from the Chancery the triall of Dismes from its proper Court: The King in the Statute for the Clergy before mentioned, gives remedy for both in the two last Chapters of that Act. Chap. 6. *Item*, *Whereas Commissions be newly made to divers Justices, that they shall make inquiry upon Judges of holy Church, &c.* But the whole was transcribed before, whereto I therefore remit. Mark chiefly that clause, that *Causes testamentarie and others, did notoriouſlie belong to the Cognizance of Holy Church*, and the King said so. Not *Rob. Winchelsea*, or *Jo. Stratforth*, or any of the past or then present Church-Ministers, who did no more then they had power; but the King: Nor did they inroach, saith He; It was rather Then an inroad upon them to interpose and trouble the orderly motion of their wheels tending to a just administration of things and giving every man his due in a way allowed by all the power that then was above, and publick. Chap. 7. *Item*, *Whereas Writts of Scire facias have ben granted to warn Bishops, religious, and other Clerks to answer Dismes in our Chancery, and to shew, if they have any thing, or can any thing say, wherefore such*

18 Edw. 3.

such

such Dismes ought not to be restozed to the said Demands, and to answer as well to us, as to the parties of such Dismes: that such Writts from henceforth be not granted, and that the parties be dismissed from the secular Judges of such manner of pleas. Saving to us our right, such as we & our ancestozs have had, and were wont to have of reason. God forbid else, and that whether Supream or Temporal power should be abridged of its due by any dependant or inferior: for the Charet never moves so well as when every wheel keeps its proper place, and every power does its own work without any others troublesome let or interposition. A wen in the body, or any monstrous excrescence (besides that it deforms the whole) robs the other parts, and none is so much pleased with what is superabundant, as the rest is displeased by following necessary defect: The injury of any member redounds to the prejudice of the whole body; And the Common-wealth flourisheth so prosperously never, as when every limbe acts for its selfe, every member does its own office, the head, foot, hand, eye or other part commanding, obeying, ruling, or being ruled as it ought, and none usurps or launcheth out over-builly into that of cure which belongs in proper design to another. Here it was meant so: and therefore, *Saving to the whether Supream or Temporal power, what sh^d belong thereto*, the appearance upon the *Scire facias* is discharged. Can any thing be more plain? And if such inquiries had been used to be made in the Court of Religion (as this Statute implies) Then, and must be there, and were here sent thither by the Parliament, And They when things came thither, said the tenth sheaf, fleece, colt, or lamb was due. Can any thing be more certain then that it was so done even by their *recognition*, assent, and purposed appointment, and ought accordingly to be paid? Whosoever did, had an unequall task to struggle against, the mighty Law, and Sovereign power that made Right, if he would go on yet waywardly to contend. The Law is, (as (1) Gods Word saith of an Oath) *the end of all strife*; sith then It said so, and in other matters it uses to make an end, being the bottome of Right, the highest appeal, and uttermost any o-

ther

(1) Heb. 6. 16.

ther men had to say for any thing, how vain must they be, who would contend, that were thus concluded before they began, and all-ruling oracles of Law rightly sought, and duly applied, and discreetly drawn forth, had determined of before, The tenth was due, and must be parted with?

About three years before, in this Kings Raigh there was a repealed Session, part whereof is made to look this way: The words are these. *Item, It is accorded that the Ministers of holy Church for monie taken for redemption of corporal penance, nor for proof and account of Testaments, or for travail taken about the same, nor for solemnitie of marriage, nor for other things touching the Jurisdiction of holy Church, shall not be impeached or arrested, nor answer to answer before the Kings Justices, nor other Ministers, but have Writs from the Chancery for discharge, &c.* which I finde construed in favour of tythes: But because it was repealed soon after, and doubtful when it was in being, the several possible senses of the words leading the grantors minde to look (not improbably on either part) two ways; I pass it over, and come to the Statute of *Sylva cadua*, which was sure to the purpose, at least by consequent. It was made indeed against (1) some exactions of tythes, yet so as it implies for other; The by-blow sets up to rights what the direct had pulled down, and By saying Some should not be paid, The rest it should seem Should; For a Prohibition allowed to take place for trees of twenty years growth, and no more, seems to whisper and suggest that in others it shall not, or the rest is left to course of ordinary proceeding. The words were given (2) before, not needful to be repeated again, and the most of practise and the regulation of things has been, I beleave accordingly. Laws are commonly like two-edged swords, they cut both ways: If they say *This*, they mean *That*; If they give the Negative, they imply the Affirmative; If one in prohibition, the other to permission; If they say, a thing shall be hindered, and so far, they imply farther hindering is not meant, but the thing as to the rest is left at liberty. Forasmuch then as the Canon gave tythe of all (growing and renewing) and the Statute, finding fault with some

15 Edw. 3 cap. 6.

By Sir Tho. Rileys
ley: in his view of
the Laws, par 3. c.
2. sec. 1 pa. 443.

(1) 45 Edw. 3 c. 5

(2) Pa. 137.

of the latitude, gave order to prohibit but of twenty years growth; the restraint of this size is implication that liberty is left to the rest, and the hindering *but so far* that in the rest was scope; Which being for the tenth Faggot, Heap, or Cord, the Jurisdiction thereof, yea the Law thereof, and thereby Right is not a little hereby, nor obscurely furthered and ratified. Or otherwise observe, as before, two things: First, *Lex terra* did here interpose, and when any thing passed the Synod, the State could not brook, This's power controuled That's Canons, which hindred the Right of Tythes effectually from going any farther then the Crown Law would allow. Secondly, but in that which was *Sylva cadua* properly, or Coppice-wood, this interposition was not, but the other power left at liberty (known to resolve as before) Therefore there was still a connivence, and so far consent and approbation, and so this Law was first *against Tythes*, is secondly *for them*; at first hand *against Some*, at second *for Others*, And affording but a prohibition for twenty years growth, leaves, yea wils, (upon the matter) the rest, and less to be paid.

(1) 50 Edw. 3. 4.

Touching which Prohibitions one thing more is in this (1) Kings Raigen (from the Statute too, for still that is to me most authentique, and as a publick Act, more safe ground of opinions then any private thinkings, which I would make use of onely in defect of those) and it is against multiplying Prohibitions upon Prohibitions: Corrupt practise may after have prevailed, and by degrees it have been brought in, that a (2) succession to five or six generations hath followed, the Libel remaining the same, but by a Law then it should not have been so, but one be all, and all but one: after that and consultation releasing, the Ecclesiastical Judge was allowed to proceed notwithstanding any other. And this shews both there was need of a Prohibition to hinder, the Court might proceed without a Prohibition; And that a Prohibition should not prohibit after a Consultation, all to the strengthening of this jurisdiction, (which still strengthens this right and title:) and hitherward also tend many things in that statute as 'tis called, For the Clergy, *Anno 25 Edw. 3.*

(2) So averred and complained in the articles exhibited to the Privy Council, 1 Jacob^{us} bi, in Mich. Ter. Object. 5 Cook Inst. 4. p. 603.

Richard

Richard 2. was the next that sat in the Throne, whence at the instance and special request of the Commons he published sundry things in amendment and relief of the Realm, and among them two in relief of the still oppressed as then thought and disturbed Ecclesiasticall Jurisdiction. (1) *The Prelates and Clergie of the Realme do greatly complain them of that Disturbance, in matter of Tythes, against the Franchise, &c.* But the words hereof were given (2) before, there needs onely now to remember thence: 1. That Triall of the Rights of Tythes is there said to belong to the Church Court. 2. It was then so. 3. It (3) had been so. 4. Of Right it Ought to be so. 5. To disturb was against the Franchise (allowed and ratified by the Charter) All which things are there plainly in a Parliament law acknowledged. It was no new Inroachment, but an allowed usage; It was no new Custome then sprung up, but *παιδείας παλαιάς* delivered from hand to hand through many Generations: It was not a senselesse Custome, getting head, *tantum non* against reason and equity at first, but the sage and advised Law had thus at beginning stated, and till now declared and appointed: And maliciously and Unduly, 'tis said, (to note the Fountain whence that grave Assemblie thought those better Streams proceeding Malice and Wrong) men were indited for doing their then duty, as of Right they ought to do, and of old were wont to do: but to proceed; in the next Chapter is more.

said, Of old were wont to be: It was then scarce one of many mens memories, and if it had been with none of any such apprehension, the plain intention of those sages would no do to have measured out their words by things, and put it upon its right bottom of something within view, which some of them had seen to come what shall be after said in fuller and plainer proof that in then 3. time, (and then likely by 4. and 5. also too) this case seem of Days was made and acted here: upon this Scene.

Item, It is accorded, that at what time that any Person of holy Church be drawn in Plea in the Secular Court for his own Tythes taken by the name of Gods taken away, and he which is so drawn in Plea maketh an Excution or alladgeth that the substance and lute of the Benefice is onely upon Tythes, due of Right and of Possession to his Church, or to another his Benefice: that in such case the general Averment shall not be taken without shewing specially how the same was his Lay Cattall. Here was

(1) 1 R. 2 c. 1.

(2) Pag. 151.

(3) *How long?*
Sir Edward Cook
looks back to some
then late Acts of
State, at 18 Ed. 3.
cap. 7. Articuli
Cleri. 2. Et. 2.
circumspetite as
gatis, in 23 of
Ed. 1. &c. But the
farthest of these
was but within the
compass of a Cen-
tury toward the
end of this 70. my
Kings great Grand-
fathers dayes, and
so far unlike and
unlike then to take
the stile of late up-
on them for the
gravity of a Par-
liament, to have it

1. Somewhat distinct from Lay Cattall, and to oppose thereto.
 2. Tithes due of Right, and that by Statute-testimony.
 3. Something to be done before the Secular Court can take notice when the subject is Tythes: 4. The scope of all to hinder that Court. For if the Land-owner might suppose them Lay; then as it was an offence for the Church-man to take them, so that offence must be examined in the proper Lay Consistory: but if they were *Tythes taken away*, (the Church-mans due Own) then elsewhere, (where it was known what would be said) and That seems forbidden, This furthered. The Goods must not be supposed Lay Cattall, They might be proved the Takers own Tythes, which must be done onely 'tis known where; And so the whole doubt of the Lists where the Controversie was to be tried, (which was the thing in question) vanisheth. This I take to be the meaning, the words being dark, and observe all along that *Lindwoods* Collection seems referred to as Text, and even the Secular Law relates still to those Rules (as approving) to try by them, whether this or That shall be taken for Tythes or not? So that interpretatively the very Canon (by approbation and allowance from abroad) is the Rule of some Civil Right immediate with us, and the Giver of some Title of Dominion, the Church by intimation and supposition of the Parliaments Civil Law.

Immediately the next was *Henry 4. of Lancaster*, whose fatherly care continued to keep together these Dues to the maintenance of Religion; and whereas some of the Order of *Cisteraux* had procured Bulls for the discharge not onely of the Land they used, (which was (1) allowed and a singular Exemption) but of what they (2) farmed out, which would not be allowed in manifest dis-agreement from the rest, against this it was ordered. (3) *For as much as our Lord the King upon grievous Complaint made to him this Parliament, hath perceived that the Religious men of the Order of Cisteraux in the Realm of England, have purchased certain Bulls, to be quit and discharged to pay the Tithes of their Lands, Tenements, and Possessions let to farm or manure*

(1) Decr. Greg.
 tit. de decimis.
 cap. 10. ex parte
 tua.

(2) Licet de be-
 nignitate sedis
 Apostolicæ sit
 vobis in iustitiam,
 ut de laboribus,
 quos propriis ma-
 nibus vel impti-
 bus colitis, ne-
 mini decimas
 solvere recuami-
 ni: propter hoc tamen non est licitum vobis,
 decimas de terris vestris subtrahere, quas aliis tra-

colendas. id. cap. legu. (3) 2 Hen. 4. cap. 4.

red, or occupied by other persons, then by themselves, (for such discharge must be, or else all paid;) In great prejudice and derogation of the Libertie of holy Church, and of many Liege people of the Realm: our Lord the King willing thereunto to ordain Remedie, by the advice and assent of the Lords Spiritual and Temporal, and at the instance and request of the said Commons hath ordained and stablished, that the Religious Persons of the Order of Cisteaux shall stand in the state that they were befoze the time of such Bulls purchased: And that as well they of the said Order, as all other Religious and Seculars, of what estate and condition that they be, which do put the said Bulls in execution, or from hencefozth do purchase other such Bulls of new, or by colour of the same Bulls purchased or to be purchased, do take advantage in any manner, That Procelle shall be made against them, and every of them by garnishment of two moneths by Writ of *Premunire facias*. And if they make default or be attainted, then they shall incur the pains and forfeitures contained in the Statute of *Provisors*, made in the 13 *Richard 2*. Done in the Parliament at *Westminster*, in the *Oct* of *S. Hillary*; and we have by it a notable evidence of the King and Kingdoms good will and allowance of the continuance of these Rights, that they would not suffer them to be curtailed or kept back unpaid, not by virtue of an Order from *Rome*, (whose power how great it then was, all know) but willed rather a *Premunire* against the Detainers, Perversers, and their Adherents and Assisters: The rest did, so should they set out their Dues, as of Right and accustomed; A strong evidence they were due indeed, when the State would not suffer them unpaid! Now not onely these but some others, it seems were wavering or shifting: The Fermours of Aliens gave within few years after occasion to this Vote. Item, (1) It is ordained and established that the Fermours and all manner Occupiers of the Mannours, Lands, Tere-ments, and others Possessions of Aliens, shall pay, and be bound to pay all manner of *Distines*. (It seems others did, for this was no positive single Imposition upon them, but onely an Exemption from that they would have been exempted from)

(1) 5 Hen. 4.
cap. 11.

thereof one, (they were then no voluntary Benevolences, but discharge of Duty, and Due upon Command, though more acceptable if their readines made them free-will-offerings.) To Parsons and Vicars of holy Church in whose Parishes the same Mannours, Lands, Tenements, and Possessions be (according to the manner then used and custom established for parochial discharge) so assessed and Due. Again, as the Law of holy Church requireth. (That the bottom, in deed of all, looked upon by the State, and here required to have obedience; and in others by the same reason; for why should we think There had any speciall Obligation to a Rule by themselves from the universal, which did rule all?) Notwithstanding that the said Mannours, Lands, Tenements, or other Possessions, be seized into the Kings hands, or notwithstanding any prohibition made or to be made to the contrary. And yet notwithstanding all this too, that backwardness and evasion of the *Cistercian* crept further, which made it needful to binde up all by an universal Decree within few years after, The grievance and remedy are there both thus proposed together. Item, It is ordained that no person Religious or Secular, (which is large enough) of what estate or condition that he be, by colour of any Bulls containing such Priviledges, (There must be Priviledges, and if Bulls from Rome could not afford them, What as then could?) The common condition of things is known; (to be discharged of Distinper tining to Parish Churches, (Payment and Parochial. Again,) Prebends, Hospitals, or Vicarages purchased before 1 Rich. 2. or sitthence not executed, shall put in execution any such Bulls so purchased, or any such Bulls to be purchased in time to come: And if any such Religious or Secular person, of what estate or condition he be, from henceforth by colour of such Bulls, do trouble any person of holy Church, Prebendaries, Wardens of Hospitals, or Vicars, so that they cannot take or enjoy the Wities Due or pertaining to them of their said Benefices, Then to incur like pain at the *Cistercian* before. Thus to and in the time of Hen. 4. whither the proceedings shew all along the good will of the State (whole Acts these have been) in favour of these

(1) 7 Hen. 4.
cap. 6.

these Dues ; looking on and not hindering, but as was occasion and fit, furthering the due execution of their neighbouring Courts Laws, ever and anon renewing the pledges of their love and testimonies of their good will, that the wheels might keep moving that brought in Tithes from every Possessor, and now it was as clear all abroad and evident to us they did so, as that men possessed any thing. Henceforth therefore particular Laws were not multiplied, (as they needed not,) aiming purposely and directly at the settling or recovery of them, but those that were, were left to due execution, and that enough. The fruit doubtless (by the Churches Authority as before directly used to call for them, and the Secular Powers assistance thus to bring them in,) such an universal Payment (save where *Achan* would hide his Golden Wedge from the holy use it had been designed for, or (1) *Ananias* and his Wife

κλῖπ το σέκελ, clip the Shekel appointed for the Sanctuary, I mean, covetous or profane men did by evident injustice hold back known Dues, against the Law,) that it needed and had a peculiar Exemption, whosoever now paid not. I need not be

(1) *Καὶ ἀποστήντο ἀπὸ τῆς τιμῆς.*
Acts 5.2. Slips off so somewhat from it. When our Tithes might have probably secured our own, we had colour of liberty to use them as we saw good : But having made them *Hu* whose they are, let us be warned by other mens example what it is *κλῖπ* *το σέκελ*, to wash or clip that Coin which hath on it the mark of God. Hooker Pol. lib. 3. Sect 79. pag. 429.

exempted from a Ninth or Eleventh, because none due to be required: I want no special Privilege to be free from contributing to a Paschal Lamb, or my Shekel for *Jerusalem* yearly, or the old *Peter-pence*, because none such now exacted among us : but to be free from this Tribute to the maintenance of Christian Religion, an Exemption was needed, which proves the *Suppositum* strongly, even as an Exception supposes an allowance of things otherwise by the general Rule, and an Exoneration or Discharge from an Impost or Quit-rent to have been paid, allows that it was due.

Three (2) sorts were indeed so exempted, (and it was need so, else they must have paid) 1. The *Templars*, till they were

(2) See a little before ; but remember, that this Exemption was not then so much granted to those Orders, as a general Exemption granted before to all Orders restrained then to this.

(3) taken off in *Ed. 2.* time, and their In-dowments settled on the Knights of *Jerusalem*. 2. Those *Knights* themselves keeping their own, and

(3) V. d. Star. de terris Templariorum in 17 Ed. 2. p. 111. of Pultons Bridgements.

suc-

succeeding to what as but now. And thirdly, the *Cisteriani*, (of which also before,) all by the Decree of the Laterane Council; and with them some others al-

(1) *Ceteris vero ut de novalibus suis quæ propriis manibus vel sumptibus excolunt, & de nutrimentis animalium suorum, & de hortis suis decimas non persolvant.* Alexand. 3. in Decret. lib. 3. tit. 30. cap. 10.

(2) *Whereof see a very learned Discovery in* Mr. Selden of Tythes, cap. 13. Sect. 2.

so: As *All the Orders* (1) *for their own new broke Grounds, their pasture ground for their Cattle, and their Garden fruits;* *some* (2) *for all their demains by particular Charter from Rome; or by prescrip-*

tion, (of lands in the possession of Clerks;) or by Grant, or by Composition, or by Custome: but these still, and the more they were, do all so much the more confirm the general usage, from which that men might be free they needed this Exemption. And this so well settled and quietly submitted to, that till the lowd and boisterous stormes in *Hen. 8.* time, when all was shaken, I meet not with here any disturbance, or any publick order, that (it seems) needed or had occasion to call for any new obedience. The Canons, last as they had been, placed as they were, and assailed (which was never wanting) with the whole force of the Temporal Power, kept all in awe, nor were Tythes but *brought into the Store-house All*, in the Prophets phrase to have better use made of them than I doubt commonly was. For 'tis the charitable intention of man, the wise provision of the Law, by the blessed providence of God that sets things often in a good way to honest or holy ends, but the corruption of man hinders; seldom does one half come to good, or are the things not to abuse enough perverted, how well or piously soever levelled and intended.

C H A P. XXIII.



Has for sixe successive Princes Raigns: Under *Hen.5. Hen.6. Edw. 4. Edw.5. Rich. 2.* and the wise puissant *Hen.7.* nothing being heard of murmure and discontent, but all in peace and silence. The Canons as in *Lindewood*, &c. governed the Consistory: *Westminster* sent to controul as often as any noise was made of extravagancy, by Prohibition: Some prudent Statutes, as *Circumspēcti Agatis, Articuli Cleri, &c.* had bound their hands too, that they might not send as oft as they would, but when *abuse called for remedy*; And so things went on in Harmony for justice, peace, and order through this intervall: Laws already made were obeyed, and more were not made, because those that were, were both for their end sufficient, and set in a way to have *sure* execution.

But now in that general Earthquake when this Earth was moved, and all the Inhabitants thereof, though some Men flood, and some Parts were not overthrown, When the turbulent passions of that mighty and boisterous Prince left nothing untouched or unshaken, and that some might seem at least to stand the faster, other parts were thought fit to be quite pulled down; yea, buried and intombed under the ruines of their own glory, as 'twere by the fatality of *Jericho's* curse, *Never more to be reedified, Maledictus vir ille coram Jehova, qui surget ut adificet, &c.* yet even Then was no prejudice offered nor diminution made of this part of Ecclesiastical Revenue, or Jurisdiction to bring it in, (a great argument of its strength that had over-lived a storm, and some necessity that it was preserved when that next was chosen to be cast away;) But before this great work was done by himself and his son, divers new sinews of strength added to confirm all that had passed before, as well by clearing the right

Iolh. 6. 26.

(1) 27 Hen. 8.
20. 12 Hen. 12.
2 Edw. 6. 13.

(2) So is interpreted and is felt, and of force that of 2 Edw. 6. 13.

(3) That the clause of treble damages in 2 Edw. 6. 13. is to be used in the Ecclesiastical Court only: See Dr. Ridley's view of the Laws, par. 3. chap. 2. sect. 5.

That Customs in payment of tythes are reasonable as in the Ecclesiastical Courts, was averred to be proved before by him, Sect. 3 and see hereof the Proviso transcribed below.

(4) And that for subtraction of any of the said tythes, offer-

ings, or other duties, the Parson, Vicar, Curate, or other party in that behalf grieved may by due proccesse of the Kings Ecclesiastical Lawes of the Church of England com-
plaint the person or persons so offending before his Ordinary or other competent Judge of the Realm, having authority to hear and determine the right of Tythes, and also to compel the same person or persons offending to doe and recle their said duties in this behalf.
27 Hen. 8. 2.

And in case any person or persons of his or their ungodly & perverſe will and mind shall be-
tain or withhold any of the said tythes or offerings, or part or parcel thereof, then the
person or party being Ecclesiastical or Lay person, having cause to demand, or have the said
tythes or offerings, being thereby wronged or grieved, shall and may convent the person
or persons so offending before the Ordinary, his Commissary or other competent Judge
of the said Ecclesiastical Lawes. And in every such case of matter or suit, the same Ordinary, Com-
missary, or other competent Adjudicator or lawfull Judge, shall and may by vertue of this
Act proceed to the examination, hearing, and determination of every such cause or mat-
ter ordinarily or summarily, according to the course and proccesse of the said Ecclesiastical
Lawes, and thereupon may give sentence accordingly. 27 Hen. 8. 7.

(5) And be it enacted by the Authority aforesaid, that if any person do subtract or
withhold any manner of tythes, obventions, profits, &c. that then the party so subtract-
ing and withholding the same, may or shall be convented in the Kings Ecclesiastical
Court by the party from whom, &c. to the intent the Kings Judge Ecclesiastical, shall
and may, then and there hear & determine the same according to the Kings Ecclesiastical
Lawes. And that it shall not be lawfull unto the Parson, Vicar, &c. to convent or sue the
withholder of tythes, obventions, or other duties aforesaid before any other Judge than
Ecclesiastical. 2 Edw. 6. 13.

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on superiour influences ; Such power, and the Jurisdiction of Tythes therewith and thereby , and the right of Tythes by consequent, yea, in Statute words expressed, not needing any derivation, He kept up in vigour, life, strength , and quickness, as it was of use ; And as well the Records preserved as other means of information obvious enough do assure , that to his time, through his time, in it, and on this side the Law continued, which settles all, to settle these, and leave them settled, an indefeasible inheritance to us their unworthy posterity : And as they were left, so I hope for Gods glory, and the maintenance of his service and servants , (the labourers that bring in His Harvest) they shall not but always continue to all succeeding generations. For, *Who hath despised the day of small things ?* says the Lord in the (1) Prophet: Or, who can deny but small things may be of great use and consideration in the greatest, sith by Divine appointment *Badgers skin and Goats hair* (2) were offered acceptably to the building of a holy Tabernacle, whereby, was intended the great God of All should be honoured and sanctified ? That Lord (*Dominus* (3) *cnjus est terra & plenitudo ejus*) who (4) despised not a convoy of the meanest and simplest of beasts for his person on earth, seems Still to Need the vile things of this lower world to set forth his glory in this vile and lower world, and if any one say ought to the contrary, or in froward opposition, say still, as then, the Lord not onely useth, but *hath need of them* : His servants, though His, *live yet by bread*, if men, *as well as by every word that proceedeth out of His mouth*, their Lord and God. And sith, Though *Jehovah* could not be pulled out of Heaven by extinguishing any of those Lamps that burned to his honour in the Temple of the Lord at *Iernsalem*, yet his wise old servants knew that unless their care, cost, and love did procure profane oile from *Syria* and *Arabia*, Those Lampes (with his honour) would go out on Earth, which made them contrive, purpose, and do accordingly ; Even so, sith the nature of things is still the same, unless there be left such loving and discreet followers of his now, by whose vigilance, industry and care, some constant supply may be apportioned,

(1) Zach. 4. 1.

(2) Exod. 25. 4. 5.

(3) Psal 24. 1.

(4) Maith 21. 3.

Rom. 13.6.

1 Tim 3.16.

and issued forth for the maintenance of the outward part of his honour and support of his Gospel, and those servants of his that do his pleasure in holding it forth (*Ἀκούοντες εἰς αὐτὸ τὸ πρῶτον ὑποτάσσοντες*, *Ministers that attend this very Thing*.) It is not without the compass of manly and Christian fear to be jealous, lest the light and brightness of the glorious Gospel of Jesus Christ, (now shining in the faces of all men, though not reaching to their hearts, it is much to be doubted, much less returning fruit in their answering upright lives,) should (which God forbid!) be extinguished upon Earth by our negligence and parcimony, though his Deity we trust shine now in Heaven, and shall, and ever, above the brightness of the Sun, and beyond all Eternity. Wee hold God to be the end of the soul, Truth the way leading to it and Him; The Church the pillar and ground of truth, to hold it out in view to the world, (this we are sure of, *ἐλπίς καὶ ἐδωκεν ἡμεῖς ἀληθείαν*, the Apostle tells it us,) and the publick Ministers are the Churches servants: If then these servants shall do that work in holding forth this truth to guide to that end, They (being Men) must not have their daily allowance of Bread withheld from them, which keeps them hayl and strong, that they may live and be Able to follow their business; or if it be, the bottome foundation faile, and the whole frame must be left to sink and ruine with it for want of sustenance, or undersustentation: Unless by an unhallowed presumption we dare go on Tempting God in stead of Trusting him, still urging him to do, and expecting he should do, even ordinary miracles for our extraordinary preservation (and then daily miracles would scarce be any wonders,) putting him upon more work yet, after his *Consummation est*, to multiply loaves for his improvident Disciples, and leading him once more out of the way into the Wilderness, to lead us out of the path of his ordinary course of Providence to expect food from Heaven, when there is plenty enough upon Earth: Which if, and the boldness of our unreasonable presumption rather than well-instructed Christian faith, could be content to put upon Him, Whether yet his servants who are to do the work, and being par-
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ty to the whole had need of some liberty of choice for refusal of the conditions, could be content to accept for enough for their parts, and hardy enough to trust to as their sufficient *Viaticum* for this convoy and their journey, may not, (considering their humane frailty,) be without some doubt: As in the space of forty years to hope for no reparation of cloaths, nor to put on a new shooe in half an age, and go provided with nothing but naked poverty to carry them through a dry and barren Wilderness, (where no water is,) Hungry and Thirsty, their souls fainting in them? Yes, They will; questionless, This and more, if they be called and compelled thereto; if the *enemies of God will deny them the way*, and the condition of things in an orderly Dispensation of Providence lead them to want as well as to abound: But all the friends of God will rather guide and help them in the direct right way to their *Canaan*, Neither denying them bread and water for their money, as (1) the cursed *Amorites* did, (but were after sufficiently plagued for it,) nor money. if needfull, to buy them what they want for their comfort in the way; It being one of the most reasonable things in the world, that they that give Heaven should not want Earth, and They that sow to us *Spiritual Things* should not but reap our *Carnall*. To all which things answering and well agreeing, it was therefore religiously, piously, and prudently, as well as justly resolved by those Councils guided *Hem. 8.* to diminish nothing here, but to keep this settled and ancient Revenue of Gods honour free from the touch of sacrilegious, profane, and imprudent as well as unjust hands, That no covetous *Gehezi* that loved his gain more then godliness, should meddle with that belonged not to him: nor greedy unconscionable *Israelite* with this portion of his Brother *Levi*, due (2) for his service he serves in the *Tabernacle of the Congregation*, (and as necessary for the Common-wealth of *Israel*, as *Judahs*, *Simeons*, or *Benjamins*;) but when every one has enough, he should be free from want, and by as good security as any other claims his Right by, his Tribe have its Own also, (not by benevolence but by Right,) and so have occasion to bless the Lord his God for the good Land he

I have led you forty years in the Wilderness: your clothes are not waxen old upon you, and thy shoes are not waxen old upon thy foot. Deu. 29. 5.
See Chap. 8. 4 Ne. hem. 9. 21.

(1) *Deut. 2. 27,*
28. 30.

(2) *Numb. 18. 21.*

has.

has given him with the rest of his Brethren : It being among our Divine Oracles, agreeable to the Laws of Nature, Equity, Reason, and Civill Commutative Justice, that He that gives should receive ; (1) *The labourer is worthy of his reward* ; (2) *No one going on warfare is to march at his own charge* ; He that feedeth a flock should eat of the milk of the flock ; And as He (3) that waited on the Altar heretofore, did partake of the Altar there, So he that ministrereth the Gospel now, should live, ἐκ τοῦ Ευαγγελίου, not of the Gospel, but of the Reward of his good message, or Glad tidings, as (4) hath been somewhat Critically, but very Judiciously and Soundly observed on that Text.

- (1) Matth. 10. 10.
Luk. 10. 7.
1 Tim. 5. 18.
(2) 1 Cor. 9. 7.
(3) Ver. 14.

(4) By M. Mede
in Diatrib. on this
place, pa. 329.

Thus then this Politick and herein wise and just Prince resolved, and accordingly gave his minde in sundry Acts passing his seal. The first whereof (clear enough in it self, and consequentially much to our purpose) was in cutting off Appeals from hence to *Rome*, and so making this Island-Church (as having no dependance of abroad,) a perfect Independent Congregation. For so it was then judged most expedient; that the affairs of *Judea* should not be sent necessarily to *Egypt* or *Babylon*; *Jerusalem* might conclude all controversies that arose in the Land where *Jerusalem* was, and our Kings Crown being of Circular and thereby most capacious form, was large enough to involve and comprehend under it a resolution of all those difficulties might arise under it ; And that Therefore all doubts should be referred to him, Therefore all forain Appeals should cease, Whereupon ordered and set forth as followeth : 1. That this of *England* was an intire Monarchy : 2. Had suffered prejudice by appeals to abroad so long, as in Causes Testamentary, of Tythes, Oblations, &c. 3. It should be so no more, but even those causes (of Tythes again expressed,) be here put to a period : And therefore, 4. Enacted, That All causes testamentary, causes of matrimony and divorce, Rights of Tythes, Oblations and Obventions, (the knowledge whereof by the goodness of Princes of this Realm, and by the Laws and Customs of the same appertaineth to the Spiritual Jurisdiction of this Realm,) (mark that Parenthesis, and the weight

weight thereof, and this engraven in the inside of a Law, inserted into the heart of an Act of Parliament, to give the testimony certainty of credit, and the thing as much assurance to us, as any thing we have, without the Bible; that all such causes, I say,) already commenced, or happening hereafter, &c. shall be examined, discussed, and definitively determined, as the nature of any of the things aforesaid shall require, (here at home,) With power, command and threat to all to do their duty; Appeals to whom they shall be made; and from whom; and where the final decision shall rest; and All in All the Branches before specified: Which does as much as any one Parliament Law can establish and assure the then power of the Church, and thereby her following Acts, (even about Tythes expressed and by name,) and by consequent the Right and Property that should be at any time the result and fruit of all: Which must amount to we know what.

In the next year we have more of the same nature, in that concluding Proviso of 25 Hen. 8. 19. (before mentioned) about keeping life in the body of the Provincials (for a while, and till the new could be made) when the Pope the seeming Head of them was taken off. All know what dependance had been, and both to composition and execution, what influences were formerly derived from that forain power upon those Laws: When the Head is cut off, the lower Nerves use (and by consequent limbs) to lose all power and motion for want of intercourse with the brain wherein they were rooted; which might be feared or doubted here reasonably, and this made it necessary to infuse a new life of power that should serve (as then intended,) for a while, to quicken the old body, till a new should be framed by chosen workmen to fit the King better, as to making and execution depending solely on his authority. Accordingly done. The mentioned Proviso ratifies all Canons, Constitutions, Ordinances, and Synodals, till the thirty two should have proceeded effectually: If they have so done, we have gained enough, (even to this particular,) and (1) shewed how before: If not, this Howsoever we have gotten, that the strength

strength that is in the Provincials, all of them, Those for Tythes before, and all other, (save what since revoked, as about Tythes nothing has) stands firm and fast by Parliament Constitution, and the evident sense of the words is to the purpose of these things unavoidable.

But if both these be yet remote, or not so fully home, wrapping things onely in implying generals (or consequences) that take in Tythes but implicitly wherein by derivation, (which is always to us fallible) may be mistake; Come we next to that which principally and fully, and in its finall and clear utmost scope intends and expresse Dueness, yea, Makes it, and where the words of the Law give the utmost any order can, a purposed Right and way for Recovery. Where is that? When the Cloisters went down and the whole Ecclesiastical state was thereby troubled not a little in 27 Hen. 8. Then was it needful, and Then was it done; and Then the right of these dues established, intended to be perpetuall. How appears this? By the Statute made the same year, in chap. 20. which (thereon to make some judgement by the way) as it is among the next that are nearest on this side toward us, So is it the utmost and farthest on the other, most mens weakness of sight is able to discern or reach to the apprehension of, and yet they think they ken all, and reach (as they do, as far as they can,) the bottome whereon all is settled: But blame them not, their sight is dim, and being hindred by busines, idleness, averseness to the thing, or manifold other sorts of incumbrances, or distractions, that they cannot, or do not purifie or strengthen it, by art, study, industry, and other painfull and laboursome means usual of searching and gaining the truth, they work not beyond the sphere of their power and ability, making able and fitting judgement of those things, they have not the plain and simple knowledge or apprehension of, that thereby they may be so able and prepared to judge. They are reputed Learned, if they can little more then turn an Almanack, understand some plain English Authour, or but have seen a Statute, and then, as the *Aborigines of Italy*, which born and bred there, travailed never far from their simple homes, but

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wonder at all abroad which strangers tell them; Or, as some simple Rusticks, who used to behold only the hills that encompass the valleys where they live, think them to be near the end of the world; if any thing be shewed them done beyond the mountains, they dare scarce believe a part, and will rest much perswaded that, whatever travellers tell them, is, (though they say, what we have heard and seen, declare we unto you,) little better then well-composed fables. For they walk by sense, and not by faith, or that little faith they have, is confined to the things of their own narrow hemispheres; Even so These, the utmost of whose knowledge, or highest of whose possible conversation or acquaintance, is but in some plain simple English Book, perhaps broken Statute Book, or perhaps but some Abridgement or *Compendium* (*Dispendium*, those excellent instruments of advancing ignorance, and by help of little cost or pains inabling sluggards to know upon the matter as much as comes to just nothing,) build certainly and confidently upon this little as if it were All & enough, are resolute & confident as if there were no more, and if any thing be obtruded or questioned farther, they bestow but their attention or wonder, with (1) *Jewish* incredulity they will not believe, nay, though a man tell it them: Suspecting all that is beyond the narrow compass of their very short reach, and not much caring if all other superfluities (they esteem them so, because they are not able to judge of them) were buried in the pit of utter forgetfulness: As little considering that their foundations have foundations, and those yet again other, and other, and under, and yet farther under, and take away either, or the advantage it lay of either; the readiest way is taking to stir all, to unsettle the firmest, to tumble down the highest, to leave order, happiness, peace, and wealth, buried under a heap of rubbish, and the fair piles we now behold and enjoy, even All the fruits of an orderly and advised disposition of things intombed under the scattered fragments of its own ruine and very confusion. For old things are not to be cast away without possible inconveniences to new; the foundations unseen, are still a part of the fair building, yea, do support it; and take away the lowest, the next

(1) Act. 17. 41.
Habak. 1. 5.

still sinks of any thing, and by degrees All; Even so take away the first settling Laws, the under-prastructions whereupon things had their *first settling* composition and stay, the rest totters, and may expect ere long ruine in a State; Particularly for tythes, their fastest and most solid strength seems below in the old unseen acts of gift and first disposition; the new can be never but a fair and presently useful declaration, to set out uttermost to the sight of the world, and as the paint that shines for peop'e to gaze upon; the strength of the wall and house both is in the inclosed materials and rocky foundation. Yet because these are of great estimation with the multitude, and ought indeed to be of some with All, I shall not shun to give them intire, in the opinion of the many enough to create a right, if nought else were, as if nought else were, perhaps they might: But as now things stand, are so far from doing it effectually and onely, that they do it not in any degree; Any more then if a present Act should be made about Fines and Relieves, the next age might think it gave the Lord that Right we know he enjoys already; Or, as a new Act about Quit-rents and Herriots should be mistaken to raise or warrant the things no man but knows had right before; (The most in addition any new order can doe being but to rectifie, dispose, or settle some new course about the things so due already, that 'tis that injury comes near a Theft, to subtract or deny the just payment of them :) So the following later Statutes nor do, nor can any more but to revive, quicken and establish the ancient right of tythes, (want and of long being before,) awaken mens dulness, inforce their payment, remove obstructions that have grown in by corruption with time, and make that which is shine brighter and fairer by the fourbishing over of a new and fresh authority; Their dueness being that these statutes did never intend to meddle with, infringe, further, help, nor hinder, but they were what they were before; and it were one of the most pitiful pieces of Ignorance besitting onely the Vulgar heard of unlettered Simplicians and deserving rather commiseration then the exercise of any of our manly passions to entertain a thought to or toward the contrary. What! that these later

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Statutes created tythes ! Made them due ! Gave them ! that their abrogation should have a possibility of taking them away ! and what the service of God has to trust to by virtue of their promulgation ! This is such a shallow conceit is onely worthy the weak brains of the multitude, where onely it possibly could be hatched or can be tolerated or indured ; no more excusable then if any should say, *Aristotles* Astronomy gave the Sun a being in the Firmament, or *Charla Forreste* first set up Game, or a present Law, if it should dispose of, did erect Parks, and Chases, or a new order about Escheats or Mortuaries, the next mistaken Age might interpret to give them being and first beginning. But to the words of the Statute, which both in the beginning and progress have dueness of Tythes existent and then in being supposed, and they are as followeth.

Forasmuch as divers numbers of evil disposed persons inhabited in sundry Counties, Cities, Towns, and places of this Realm, having no respect to their duties to Almighty God, but against Right and good Conscience, have attempted to subvert and withhold in some places the whole, and in some places great parts of their Tythes and Oblations, as well personal as predial. Due unto Almighty God, and holy Church; and pursuing such their detestable enormities, and injuries, have attempted in late time past, to disobey, contemn, and despise the processes, laws, and decrees of the Ecclesiastical Courts of this Realm, in more temerous and large manner then before this time hath been seen : For reformation of which said injuries, and for unitie and peace to be preferred amongst the Kings Subjects of this Realm, our Sovereign Lord the King, being Supreme Head in Earth under God, of the Church of England, willing the spiritual rights and duties of that Church to be preferred, continued, and maintained, hath ordained and enacted by Authority of this present Parliament, That every of his Subjects of this Realm of England, Wales, and Calais, and the Marches of the same, according to the Ecclesiastical Laws and Ordinances of his Church of England, and after the laudable Usages and Customes of their Pa-

Tythes shall be paid according to the Custome of the Parish, &c.
27 Hen 8. cap. 10.

riſh, or other place, where he dwelleth, or occupieth, ſhall payd and pay his Tythes, and Offerings, and other duties of holy Church, and that for ſuch ſubtractions of any of the ſaid tythes, offerings, or other duties, the Parſon, Vicar, or Curate, or other partie in that behalf grieved, may by due proceſſe of the Eccleſiaſtical Lawes of the Church of England convent the perſon or perſons ſo offending before his Ordinary, or other competent Judge of this Realm, having authoritie to hear and determine the right of tythes, and alſo to compel the ſame perſon or perſons ſo offending to do and yeeld their ſaid duties in that behalf.

This was the Legiſlative part: follows order in caſe of contumacy, that the Ordinary or other Judge ſhall crave the aſſiſtance of the Juſtices to attach the party, and commit him to ward, till he ſhall recogniſe to yield quiet obedience, &c. Provided that this extend not to London, who were to have a way by themſelves: nor to hinder any remedy by due prohibition, &c. Nor any thing to continue longer then till the new Canon ſhould be made, which is not yet done, and whereof before enough. Mark the whole Tenour; Is here any thing of giving Tythes? Of wronging any man of a Farthing by a new and forced Impoſition? Of removing from one to ſettle on another? To enrich *Peter* by taking from *Paul*? Not a ſyllable. But all upon ſuppoſition, that ſomewhat was due before; Let that be paid; or if not, the allowed ancient courſe is awakened and quickened for recovery. So 'tis onely a Declaratory Law, as *Sir Edward Cook* ſpeaks often upon like occaſion, renewing what was, and rowſing up the dulneſs of perverſe and covetous men to pay, who were found backward; but this was a goad to force them on forward in the way they had went, and wherein they ought to go. It were a diſparagement to have here a Right ſettled to the Thing, and to it in our opinion, (yea, to our opinion it ſelfe) to think ſo.

But it ſeemeth things went not on by help of this new Law fully according to deſire: The Times were we know troubled, and many other Rights being both unſettled and removed, no marvell if theſe (Neighbours to them) were alſo ſhaken.

Divers

Divers no doubt wished them more then so, quite down, the *mouthes* or rather *Gulphs*, or rather then both *hellish depths* of sacrilegious and covetous carnal men having never been but wide open to devour what ever was sacred, and here stood gaping to swallow this morsell none of their Own, but due to man in Justice, as well as to God for Religion, and by Dedication. For going on to subtract the just payment, the complaint is evident, inshrined in the sacred Monuments of the Law it selfe, and entered the Parliament Roll for memory, with what the wisdom of that Councel (the Representative of the Nation) could afford for remedy of so large a spreading inconvenience. It was intended chiefly for the new Improprator inabling him being Lay to make his Complaint in the spiritual Court, but reaching in all other also; with intent to let him in with them, by no means purposing to shut or let both out, and though with due restraint at first to that *examen* onely, yet Evasions were after found that both have used to go out, where no more was intended but to let one in. The Law speaks as followeth.

How Tythes ought to be paid, and how to be recovered being not paid.

Where divers and sundry persons inhabiting in sundry Counties and places of this Realm. and other the Kings Dominions, not regarding their Duties to Almighty God, and to the King our Sovereign Lord, but in few years past more contemptuously and commonly presuming to offend and infringe the good and wholesom Laws of this Realm, and gracious commandments of our said Sovereign Lord then in times past hath been seen or known, have not letted to subtract and withhold the lawfull and accustomed tythes of Corn, Hay, Pasturages, and other sort of tythes and Oblations commonly due to the Owners, Proprietaries, and Possessours of the Parsonages, Vicarages, and other Ecclesiastical places, of and within the said Realms and Dominions, being the more encouraged thereto, for that divers of the Kings Subjects being Lay persons, having Parsonages, Vicarages, and tythes to them and their heirs, or to them and to their heirs of their bodies lawfully begotten,

31 Hen 8. cap 7.

Mark: Laws, duties, and lawfull Tythes.

or for term of life or years cannot by order and course of the Ecclesiastical Lawes of this Realm, sue in any Ecclesiastical Court for the wrongfull withholding and detaining of the said tythes or other Duties, nor cannot by the Order of the Common Lawes of this Realm have any due remedie against any person or persons, their heirs or assignes, that wrongfully detaineth or withholdeth the same, by occasion whereof much controverſie, ſuit, variance, and diſcord is like to inſurge and inſue among the Kings Subjects, to the great detriment, damage, and decay of many of them, if convenient, and ſpeedy remedie be not therefore had and provided.

Wherefore it is ordained and enacted by our ſaid Sovereign Lord the King, with the aſſent of the Lords Spiritual and Temporal, & the Commons in this preſent Parliament aſſembled, & by Authority of the ſame, that all and ſingular persons of this his ſaid Realm, or other his Dominions, of what eſtate, degree, or condition ſoever, he or they ſhall ſell, truly, and effectually divide, ſet out, yield and pay all and ſingular tythes and Offerings aforesaid, according to the lawfull Cuſtomes and Uſages of the Pariſhes and places, where ſuch tythes or Duties ſhall grow, ariſe, come, or be due. And in caſe it ſhall happen any person or persons of his or their ungodly and perverſe will and minde to detain or withhold any of the ſaid tythes or Offerings, or part or parcell thereof, then the person or party being Eccleſiaſtical or Lay person, having cauſe to demand or have the ſaid tythes or Offerings, being thereby wronged or grieved, ſhall and may convent the person or persons ſo offending before the Ordinary, his Commiſſary, or other competent Miniſter, or lawfull Judge of the place where ſuch wrong ſhall be done according to the Eccleſiaſtical Lawes. And ſo on to the Appellants paying Coſts before he remove the ſame; Order to call in the Magiſtrates help in caſe of contumacy; ſaving Lands diſcharged of Tythes, and the City of London, &c.

This is that clearly is, and if there we no more, one would think, enough to ſettle as far as an Act of State or publick Decree can, both a right and a courſe of Juſtice, that men ſhould

both

both be apportioned these Dues, and know how to come by them; of which yet I remember my word before, and far deeper is laid, and upon more firme, and lower, faster ground then any single tottering Act the Foundation of this Right, which settles not but upon (or with) the whole body of immovable Fundamentals of the Kingdom, is clasped in with the Roots of Government, hath grown up with it through all her known progresses to the present State of perfection, is flesh of her flesh, bone of her bone, nor can, is much to be feared, without mortal violence admit a partition and segregation: such, as if mens private parcimony and pinching, wretched Covetousness, joyned with improvidence and injustice, should go on to call for so great a mischief upon themselves, would indanger to shake the frame of the whole *Compages*, and by the same unadvised Principle of its unjust and violent removal leave little constancy or assurance of any thing. Which great Possessours had need chiefly to look to, and prevent if they can, upon any pretence; as of easing poor men of their heavy burdens, preventing Troubles usuall in separation, hindering costly Suits formerly multiplid, wherein Christs Minister had sometimes the hap or favour of Justice, and to get the better of his wrangling adversarie, that will remove the ancient Land-mark, will remove any; they which complain of this Imposition may ere long think others heavy; that will unsettle one property will unsettle another. None is more rooted then this, hath its armes and fibres dispersed through the whole body of the Laws Common Law, Canon Law, the Statutes, the Conquerours, *S. Edwards*, *King Edwards*, (the one past, the other to come) and hath indeed over-lived all the mutations and revolutions of State that have been ever since here we have account of any thing. Good Englishman take heed in time, thy lot is fallen to thee in a fair ground, yea thou hast a goodly heritage, if thou canst be contented, thankfull, quiet, serve God, and give every man his his Due. As *Hamor* and *Shichem* to the sons of *Isaac*, *The Land behold it is large*; Here is enough for every one, if we can do as we would be done unto, give every man his Own, and suffer the Law to be master and onely safe Rule

Gen. 34. 21.

to

to walk by; I am thine own flesh and bloud, and cannot but love thee, (yea, my self in thee,) with such tears of love I beseech; Let no grating Inroachments procure mutual Trouble and molestation; Let not cruelty, covetousness, self-love, pride, malice, discontent, or pining envy that another man should have more then our selves, that another should have as much as our selves, that Gods Minister (our Governour in the Lord) should have an Own with us, (his known end granted Due) prevail, least we wrap him with our selves in misery and wo, and all together in rage, fury, trouble, war, and by these wofull steps at last, temporal if not eternal confusion. If the publick, had passed any thing to the contrary, This would alter the case; But I speak as Things are.;

C H A P. XXIV.



Here remaineth yet one Statute more, the last direct: He that reades the former, and considers their plain, open, and full Contents, would scarce think it requisite their plainness should have an exposition, or their fulness and sufficiency could need any supplement: but men love the things of this World Dearly, if any evasion be to be made from parting with the love of their souls, they will finde it: Call they the things of this World Goods? their fears, hopes, cares, desires, and all the affections of their souls shew an higher price in their estimation, as Best; and *loath to depart* they sing, for Religion, Gospel, the Service of God, and to redeem the acknowledged Ordinances of Heaven from the land of utter forgetfulness. Such is their worldly mindedness: I speak not of all, but so many there were heretofore as made it needfull to add, what young King *Edward* did, and by the advice and Authority of his Parliament to make yet stricter provision that former good Laws should not be perverted (though 'tis complained His is since as much perverted as any) and men might not withdraw their

their Dues upon any occasion. This was done soon after he began his Reign, and in the words following.

Whereas in the Parliament holden at Westminster the fourth day of February, the seventeenth year of the late Hen. 8. there was an Act made concerning payment of Tythes predial and personal, and also in another Parliament, July 24. in 32 Hen. 8. another Act was made concerning true payment of Tythes and Offerings; in which severall Acts many and divers things be omitted and left out, which were convenient and very necessarie to be added to the same: In consideration thereof, and to the intent the said Tythes may be hereafter truly paid according to the minde of the makers of the said Act: Be it ordained by the King our Sovereign Lord, with the assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That not onely the said Acts made in the said 27 & 32 of Hen. 8. concerning true payment of Tythes, and every Article and branch therein contained shall abide and stand in their full strength and virtue; but also be it further enacted by Authority of this present Parliament, that every of the Kings Subjects shall from henceforth, truly and justly without fraud or guile, divide, set out, yield and pay all manner of their prediall Tythes, in their proper kinde, as they rise and happen, in such manner and form as hath been of Right yielded and paid within fourty years next before the making of this Act, or of Right or Custom ought to have been paid. And that no person shall from henceforth take or carry away any such or like Tythes, which have been yielded or paid within the said fourty years, or of Right ought to have been paid in the place, or places tythable of the same, before he hath justly divided or set forth for the Tythe thereof the tenth part of the same, or otherwise agreed for the same Tythes, with the Parson, Vicar or other Owner, Proprietarie, or Fermour of the same Tythes under the pain of Forfeiture of treble value of the Tythes so taken or carried away.

And be it also enacted by the Authority aforesaid, that

Cc

at

*In what manner
Tythes ought to be
paid. 2 & 3 Ed 6.
c. 13.*

In continuance of
 care thought be
 for remedying that
 avel mentioned to
 be redressed, and
 was redressed by the
 Provincial of Sam.
 Mepham before,
 Cap. Quia qui-
 dam, vi. de deci-
 mis. Vid. Sup. p. 156. & 171.

at all times whensoever, and as often as the said prediall tithes shall be due at the the tithing time of the same, is to be (1) lawfull to every partie, to whom any of the same tithes ought to be paid, or his Deputie, or servant, to view and see their said tithes to be justly and truly set forth, and severed from the 9 parts, and the same quietly to take and carrie away. And if any person carry away his Coyn, or Way, or his other prediall tithes, before the tithes thereof be set forth, or willinglie withdraw the tithes of the same, or of such other things, whereof prediall tithes ought to be paid, or do stop, or let the Parson, Vicar, Proprietarie, Owner, or other their Deputie or Fermours, to view, take, and carrie away their tithes, as is abovesaid, by reason whereof the said tithe or tenth is lost, impaired, or hurt, that then upon due proof thereof made, before the Spiritual Judge, or any other Judge, to whom heretofore he might have made complaint, the party so carrying away, withdrawing, letting or stopping, shall pay the double value of the tenth or tithe so taken, lost, withdrawn or carried away, over and besides the costs, charges, and expences of the suit in the same, the same to be recovered before the Ecclesiastical Judge, according to the Kings Ecclesiastical Laws.

And, Be it farther enacted by the Authoritie aforesaid, That all and every person which hath, or shall have any Beasts, or other Cattle tithable, going, feeding, or depasturing in any waste or common ground, whereof the Parish is not certainly known, shall pay their tithes for the increase of the said Cattle so going in the said Waste or Common, to the Parson, Vicar, Proprietarie, Portionarie, Owner, or other their Fermours, or Deputies of the Parish, Hamlet, Town, or other place, where the owner of the said Cattle inhabiteth or dwelleth.

Provided always, and be it enacted by the Authoritie aforesaid, that no person shall be sued, or otherwise compelled to yield, give, or pay any manner of tithes, for any Mannors, Lands, Tenements, or Hereditaments, which by the Laws and Statutes of this Realm, or by any Priviledge

Willeage or Prescription, are not chargeable with the payment of any such tithes, or that be discharged by any composition real.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that all such barren, heath, or waste ground, or other then such as be discharged for the payment of tithes by Act of Parliament, which before this time have lain barren, & paid no tithes, by reason of the same barrenness, and now be, or hereafter shall be improved and converted into arable ground or meadow, shall from henceforth, after the end and term of seven years, next after such improvement fully ended and determined, pay tithe for the Corn & Hay growing upon the same: Any thing in this Act to the contrary in any wise notwithstanding.

Provided alwaies, and be it enacted by the Authoritie aforesaid, that if any such barren, waste, or heath ground, hath before this time been charged with the payment of any tithes, and that the same be hereafter improved and converted into arable ground or meadow, that then the owner or owners thereof, shall during the seven years next following, from and after the same improvement, pay such kind of tithe as was paid for the same, before the said improvement: Any thing in this Act to the contrary in any wise notwithstanding.

And be it farther enacted by the Authoritie aforesaid, that every person exercising Merchandises, Bargaining and Selling, Cloathing, Handicraft, or other Art or facultie, being such kinde of persons, and in such places, as heretofore within these forty years have accustomedly used to pay such personal tithes, or of right ought to pay, (other then such as have been common day-labourers,) shall yearly at or before the Feast of Easter, pay for his personall tithes, the tenth part of his clear gains, his charges and expences, according to his estate, condition, or degree, to be therein abated, allowed, and deducted.

Provided, And be it also enacted by the Authoritie aforesaid, that if any person refuse to pay his personal tithes in form aforesaid, that then it shall be lawful to the Di-

narie of the same Diocesse, where the partie that so ought to pay the said tithes is dwelling, to call the same partie before him, and by his discretion to examine him by all lawful and reasonable means, other then by the parties own Copposal Oath, concerning the true payment of the said personal tithes. Then after a Proviso about Easter-offerings.

Provided also, and be it enacted by the Authoritie aforesaid, that this Act or any thing therein contained, shall not extend to any Parish, which stands upon and toward the Sea-coasts, the commodities and occupying whereof consisteth chiefly in fishing, and hath by reason thereof need to satisfie their tithe by fish: but that all and every such Parish and Parishes shall hereafter pay their tithes, according to the laudable customes, as they have heretofore of ancient time, within these forty years used and accustomed, and shall pay their offerings as is aforesaid.

Provided also, and be it enacted by the Authoritie aforesaid, that this Act or any thing therein contained, shall not extend in any wise to the Inhabitants of the Citie of London, and Canterbury, &c. And be it further enacted by the Authoritie aforesaid, that if any person do subtract, or withhold any manner of tithes, obventions, profits, commodities, or other duties before mentioned, or any part of them, contrarie to the true meaning of this Act, or of any other Act heretofore made, that then the partie so subtracting, or withholding the same, may or shall be convented and sued in the Kings Ecclesiasticall Court, by the partie from whom the same shall be subtracted or withholding, to the intent the Kings Judge Ecclesiasticall shall and may then and there hear and determine the same according to the Kings Ecclesiasticall Lawes. And that it shall not be (1) lawful unto the Parson, Vicar, Proprietarie, Owner, or other their Fermor, or Deputies, contrarie to this Act, to convent or sue such withholders of tithes, obventions, or other duties aforesaid, before any other Judge, then Ecclesiasticall. And if the sentence given finde not obedience, the partie to be excommunicate, in which state if he stand forty daies, upon Certificate into the Chancerie, to have the writ

(1) How then have
justs been ordinari-
ly and at first in-
stance commenced
where they have
been?

ed out *De Excommunicato Capiendo, &c.*

And before a Prohibition granted, the Libel to be shew-
ed to the Judge. &c. whose hands (the Eccles. Judges) are
after bound he shall not hold plea of any matter, cause, or
thing, being contrarie or repugnant to, or against the in-
tent, effect, or meaning of the Statute of *West. 2. cap. 5.*
the Statute of *Articuli Cleri, Circumspectè Agaris, Sylva*
Cadua, the Treatise *De Regia Prohibitione*, ne against
the Statute of 1 *Edw. 3. cap. 10.* (as 'tis printed, but it seems
to be rather from the second Parliament of 1 *Edw. 3. ca. 11.*)
ne yet hold plea of any thing whercof the Kings Court of
right ought to have Jurisdiction: Any thing therein con-
tained to the contrary in any wise notwithstanding, Ex-
cept for tithe of *Parrage goods in Wales.*

I have given this the more fully, because it seemeth the
last direct binding law: and though 'tis at top, the bot-
tome whereon all is settled; But so is it not: There is that
lays five times deeper, as hath been shewn, and the axe must
be laid to the root of the tree, even the bottome of all Law
with us, and more then 500 years deep before the utmost can
be reached here, which every private man should do well to
think of, that dares give his thoughts scope to deliberate a-
bout eradication. What is it to go down so low, and strike at
those humours by strength of Physick that have their sedi-
ment at the Root of Nature? *Galens* hand trembled the
day before he gave his Rubarb, foreseeing thereby the vio-
lence he must offer to the whole by pulling away a part, and
to fetch some superfluities away, the Body must be shaken: If
vigour of nature should not here meet to assist, no less dan-
ger or fear then which it might import to think of purging
out so settled corruptions; if tythes be such, and not as ma-
ny take them, very wholesome juices. But to the Statute,
the words whereof carrie as much shew of opennes and
plainnes, and this written in the face of them, as can be
expected or could be devised, and that for more then a ty-
rannically imposed exaction, a legal and just right of all ac-
customed Tenths to be hereby both payable and demand-
able: Nor do I fear to be mistaken, because lately perusing
them,

them, the most Learned Lo. Cook I finde his interpretations agreeing with these my apprehensions. Though why name I him alone, when all the Learned go the same way? the painful Students, the professing Graduates, the whole Innes of Court, doubtless, and as well as the Reverend now Judges as the whole Bench of them ever since have gone on interpreting, declaring, and judging according to this opinion.

CHAP. XXV.



Nely there is one thing wherein (with due respects) I should crave leave to give in mine opinion with some difference from that most Learned man, (which seems also his constant resolution, because he repeats it,) and it is, That the proper scene of the trial of these dues was not anciently in the

Cook in Instit. 2. pa. 661. on the view of Statute of 2 Edw. 6. And before, on the Statute of Circumspetere agatis. pa. 489. and in Instit. 4. chap 53. pa 160.

Consistory, till placed there by *Circumspetere agatis, Articuli Clerici*, 18 Edw. 3. chap. 7. &c. but in the County Court; Which if, much of what before would lose much of its strength, But seems not so allowable for these following reasons:

I. No such thing is averred plainly and positively, in any of these Laws, or any other, And that had need be plain and positive should have changed a thing, Such a thing in being.

II. The evident contrary is in them all either expressed or insinuated. For, for the latter it mentions the remanding or dismissing suits of Dismes back from the Secular Judge, which must be sure somewhither: And for the two former which might be answered to create that referrer, take them either together, or apart:

1. Together, and so they mention severally a Prohibition: *Prohibiting, what say I?* That which never was?

was ? Or, then was no where ? This were nonsense as to the reason of it, and it were a great blemish to the wisdom and gravity that hath always attended those Assemblies to suppose they would declare any thing for Law that might imply contrariety or absurdity in truth and reason : As that, That should be prohibited to be, that had not been, or that the Kings Judges should deal circumspectly with the Ecclesiastical, not forbidding them to hold plea of that they never did hold plea. The rule is in nature before the exception, the thing before the limitation; And exhibition of something granted and used before there can be thereof a Prohibition ; As there must be Marriage before Divorce, and a property of *Meum & Tuum*, before the Decalogue can take place forbidding to steal : Even so here, there must have been a trial of tythes before with the Eccles. Judge, before the Kings could be prohibited to prohibit him; his hands must have been loose, before they could be forbid to be bound, and He used to meddle before any could soberly and rationally meddle to hinder his meddling.

2. Apart, and so all is yet plainer : for consider them distinctly, and by the first Chapter of *Articuli Cleri*, No prohibition was to take place to hinder the proper Court in matter of tythes, and surely then the business was there : And for *Circumspecte agatis* there is express mention of their there trial. For the Judge of *Normich* was not to be hindred, nor his Clergy, if, 1. they held plea of things meerly spiritual, as of penance, &c. in their Court Christian. 2. Nor if a Parson demanded of his Parishioners oblations or tythes due and accustomed, &c. (So that, They were there Then demanded:) and in the close: **In all cases afore rehearsed the Spiritual Judge shall have power to take knowledge** notwithstanding the Kings Prohibition. Which is not a little strengthened by a former Statute, (as it seems it is, though

(1) Westm. 2. c. 5.
13 Edw. 1. in Pula
tons *Abbrdg.* p. 50

(2) *The same Statutes*
(of Articuli
Cleri, Circum-
specti Agatis, &
Westm. 2.)

allow to the Spiritual Jurisdiction cognizance of a fifth, and of all parts less than a fourth of the value of the Church in tythes controverted between two Parsons. And no Inducavit is grantable to forbid the suit of one of them commenced for any lesser part in respect of the Patron's Rights only. Neither upon them by consequence hath any Writ of Rights of any part of Tythes that appears not to be a fourth part of the Churches value been allowable. So expoundeth Ad. Selden in his History of Tythes, p. 437.

III. The Stat. of 1 Rich. 2. 13. mentions it then, as *Of old*, and had *Wont to be*, that tythes should be tryed where they were sent, but had been lately restrained; which had been very inconveniently said of such late times as were so little before as almost within an hundred years, especially by a grave Parliament, as was urged before, which useth to measure words and know things. But of this sufficiently there.

IV. The Statute of Consultation, alledged also before, was made 24 Ed. 1. *sc.* before two of the three alledged, and so speaks as could not be supposed more plain against stopping the Ecclesiastical Judges by Prohibition: which shews surely they did proceed then.

(3) Pa 103, 104.
8cc.

V. Review and call to mind what was said before here, (3) both of erecting the Ecclesiastical Court, and trial of tythes there, and how long, (for they were under the Canon) and this will be much toward, or reach home to the clearing of the whole business.

VI. Examine things according to their nature, and they would seem always fittest here considerable: For who looks upon things as they are, and thinks not every man fittest to take care of his own matters? The Church fittest to look to the things and support of the Church? Or, that the maintenance of our Religion could have been ever anywhere more fitly inquirable and determinable of, then in the Court Christian

stian, the Court of Religion? Yea, even further for this reason, because they were *spiritualibus annexa*, as *Bracton* calls them ordinarily, they must be in way of tryal *spiritualitatis annexa*. And hence also we finde the purposed and dispersed tractation of them, as in their proper Cell, in the Canons; Not in the Statutes, nor in the Year-books, nor in *Bracton*, nor *Fleta*, nor the Common Law it self, (of late days,) for the nature of them brought them elsewhere for Regulation and Tractation; Why not? Yea, necessarily therefore to the answering Court for discussion.

VII. Take the opinion of one, not less Learned (without disparagement,) then that Learned Justice, who with judgment and much freedom inquired here into, and purposely long since; And he settles the Jurisdiction from the County to the Consistory by the Conquerour, as before. (1) His 14. Chapter is a Judicious and Intended History of that Jurisdiction, which having found commixed with the Secular under the Saxons, and Danes, He makes them part with the Conquerour: He produces some instances of Cases soon after reasoned and determined before the Ecclesiastical Judges, and with equal diligence is troubled to find, as a rarity, some other in the Kings Court so low, as about *Hen. 2.* and King *John*, and then Regularly they began to come to the Church alone, and nere there handled at first instance onely. This, (and it hath been so ever since) is long before *9 Edw. 1.*

VIII. The Stat. *De Regia Prohibitione*, seems made when before. The print has it indefinitely for *Hen. 3.* or one of the first *Edwards*: But sith no evidence is for any of these, the place and manner of entring may give it to pass that it was in the former, sith, as before, in the least deceiving or to be suspected way of entring in Manuscript of about those times written, it is cast in among the Laws of that date, and by name before the Statute *De Bissextili*, made *21 Hen. 3.*

IX. Plainly in another Manuscript of that Kings Raigh, among other grievances which the (2) Clergy in a Synod at *London* represented to *Orho* the Popes Legate, desiring him to represent them to the King for remedy; One was, The lavish use of the *Indicavit*, whereupon, *Solent Justiciarii*

Dd

Domini

(1) Selden Hist. of Tythes, cap. 14.

(2) Annals of Burton, in M. Selden, p. 432. And observe what follows in Rob. Grossetest on complaints there next, affecting that, A seculari n. iudice discerni non poterunt, p. 431. and the advice of the Synod at London, p. 433

Domini Regis judicare, quota pars decimarum peti possit vel debeat coram Judice Ecclesiastico: which was to binde the hands of that Judge, presupposing therefore certainly, and therein that he had then some liberty to use them. And another Article: *Item ne currat Prohibitio Domini Regis, ne Rector Parochialis Ecclesie impetat eis qui percipiunt decimas infra limites Parochie sue*. There needed a Prohibition then to stop the usuall course of the Parsons, suing for the tythes of his Parish; where? think we.

(1) Decime quarum decime debent in foro Ecclesiastico interari. lib. 6. cap. 37

X. To omit (1) *Fleta*, who might be but under *Edm.* 2. (and yet many passages are in him fair for proof, that as sure they were then, so things had continued from *Bractons* time :) But for *Bracton* by assurance enough 'tis evident from him, that he often mentions tythes as *Spiritualibus & spiritualitati annexa*: and indeed he that can judge any thing by complexion of things, will be apt to pass his sentence from their nature; they were not far off from Causes Testamentary, Matrimonial, and other of tenderest like nature and consequence, then knowne to have their walke here. Among other (2) Exceptions (treating of them in general,) he lays one fort against the Jurisdiction of the Court, describing and defining what each is, and coming to that Section, *Quae pertinent ad forum Ecclesiasticum, & quae ad forum seculare*, among other things this comes in: *Nec pertinet ad eos* (the King and Secular Judge) *cognoscere de iis quae sunt spiritualibus annexa; sicut de Decimis & aliis Ecclesie provisionibus*. Item, *nec de catallis quae sunt de testamento vel matrimonio*. After proceeding to the Common place of Prohibitions, (3) *quando & in quibus locum habet Prohibitio, sicut de resacra, &c.* when allowable, when not; They do lay he says in case of lay fee, &c. but they do not when the doubt is *de aliquo spirituali, vel spiritualitati annexo*: Is tythes any such directly? It follows: *Item locum non habebit prohibitio si agatur de decimis*: which gives more then their Jurisdiction here, here alone without any removal; a Prohibition could not prohibit, and it had been vain again to suppose a Prohibition of that might not be prohibited. This is farther than alone that takes place to cause a suit to be new

(2) Lib. 5. Tra. 5. de Exceptionibus, cap. 1. sect. 5. fo. 401.

(3) Lib. eod. cap. 9. & 10 fo. 406, 407.

graffed

(1) grafted from a Clerk to the Patrons name, bringing upon supposition of wrong done to him in his Lay-Advowson,) the main to the temporal Judge by *Indicavit*; And this not only if the whole tythes were in question, but a (2) fourth part, a fifth, or a sixth, but no farther: for so far the Writ of *Indicavit* would then reach, though (3) since it bee altered, and to the fourth part limited. Again, *Item* (4) *locum non habebit prohibitio de recenti spoliacione, ut si Clericus Clericum spoliaverit de Decimis vel aliis de quibus cognitio pertinet ad forum Ecclesiasticum*, in another place. And yet again in another, they are both styled (5) *Res Spirituales* (not onely *Spiritualitati annexe*, in their Jurisdiction as was alledged, where (6) before, but *Res* (7) *Spirituales*.) and are said to shift faces and change shapes; now for This, anoth for That; One while for lay, Then for tythes, and back again ere long (as it may be) to Temporals. As Lay, *Laica catalla*, So they are under the secular authority: As *res decimate*, tythes marked out, so under the spiritual: and as sold returning back again to *Westminster*. *Quo teneam nodo?* yet thus it is, and the thing the same under severall suppositions and considerations. Many other such assertions, suppositions, and intimations there are in him; The whole frame of whose Discourse bends this way, or is managed as supposing things thus, and I am confident he hath not any thing to the contrary. As for *Glanvil* who was before, he mentions the Court Christian often, but never tythes tryed there that I could finde, (though *Glebe* often;) This I confess: But then withall he mentions them not all to trial, nor as here, nor anywhere else, and so his authority is to be drawn neither way. *Bracton* dates from the farthest backward besides. And he hath as hath been seen.

And these things do, I rest assured, secure the thing undertaken for the Jurisdiction of tythes sooner in the Consistory (and by consequent their right) then was allowed by that most learned man. I hope his friends and favourers will not take it amiss that a Pigmy dare confront a Gyant, or *Hercules* in his power have some opposition by a weak and common passenger: *Mugis amica veritas*, it must be so with

(1) Cap. 4. sect. 1. fol 402.

(2) lb. sect. 2.

(3) By the Statute of Westminster ca 5. Concerned Aguis, sect 2 & Art c Cleric, cap. 2. Whereof see a notable discussion in M. Seiden, de dec. cap. 14.

(4) Cap. 10. sect. 6 fo 408.

(5) Ca. 16 fo 411

(6) Cook Inst ubi supra.

(7) Bract fo. 412

The Civill Right

me, and before whomsoever the beauty of Truth most gracious and lovely. *Exosculor*, I profess to love and reverence the memory of that most deserving man, both blessing and admiring the footsteps of his ingenuous sedulity, wherever I see him tracing with so much care, industry, eloquence and gravity, the windings and turnings of his sacred profession, (for he was a Judge of Israel:) But *magna est veritas & prevalebit*. Truth hath the greatest command, power, and lustre with me before All, and must ever prevail before any opinions, perswasions, persons or names of men in the world. Which I take to be here, that the Jurisdiction of tythes was not made a branch of Church-power by force or permission of any ancient Statute, but a native and connatural branch of her first power, born with it and receiving life in this world, and hath been bred, continued, conserved, and brought up with it hitherto, nor since that Court has been, but this hath been a part of its work through all ages and generations. And so should I have done with this Statute, (whose comments have occasioned this digression,) but that finding there a clause for personal tythes, yet in force, and the things due, but little said of them elsewhere, and this thought the Onely ground; For illustration of a dark truth, and clearing their doubted right, I think it not amiss to continue a few steps more besides the direct way, to enquire presently what deeper radication they may be discovered to have then the bare command of that single authority: For no question is, but they are due, and in conscience ought to be paid, as well as other dues, the Law remaining, whose Dueness arises onely by the word of the Law: *Necessitate precepti*, as we say, meetly by vertue of the commandment; no other equity or necessity of the Thing appearing, but onely because they are stated settled Rights, by like reason whereto here. He that denies my Heriot or Relieve, may as well his half years rent: He that shuffles for his suit or service, Homage or Fealty, by like reason (why not?) for his Corn or money: For the same Law gives the same Due to all; They stand upon the same bottome, are brought in by the same Spring, and if this prove too weak for the one, it may not be long ere Thence the other fall short of Home also.

CHAP. XXVI.



AS to Personal Tythes then, (to lay the whole under one view,) two things very material are to be observed to have been laid down before in the bosom of the alledged Law: 1. That they were not now let up, but the Statute in making them payable sayes they shall be paid where for fourty years past they had been: (which if it had not been here averred, without any great difficultymight have been made good from the condition of things, But we take that is.) 2. There was not only an Usage but a Right: So are the words; All persons shall pay where for time past they have paid, or of Right they ought to pay. A Right then, and an Usage, a Title and a Possession are already secured. Thus from the Statute, and beyond the Statute; but we must go much higher to search how. And we may not seasonably urge the Patern of *Abrahams spoils to Melchisedek*, nor what I finde (1) urged, *Decimas & primitias manuum tuarum*; Deut. 12. And Bring ye All the Tythes into the Lords store-house, (not some but All,) Mal. 3. Or, which is most pertinent, Give the Lord his honour With a good eye, ——— and dedicate thy Tythes With gladness: Give unto the most high as he hath enriched thee (as 'twere howsoever,) Ecclus. 35. 8, 9, 10. *Da secundum Donatum ejus*, is the vulgar there: whence *Alensis* nimably, *Si ergo ex dono Dei possidentur omnia quæ acquiruntur iusto negotio vel arte, de illis decimæ dandæ erunt*: If we must render of all God gives, and he give what ever we get, then of all we gain in what just way soever: nor yet may I insist upon Councils and Fathers, as *Hierom*, *Chrysostome*, *Gregory*, *Ambrose*, *Augustine*, &c. the latter of whom (2) speaks out fully indeed, *Quod si deci-*

(1) By Dr. Tildesley on his *Ana-
mauerfion* in
Mr. Seldens
Preface to his Hi-
story At this day,
Qui Religiosiores
sunt inter Judios,
loco decimarum
ejeen. noly. am
pendunt de omni-
bus lucris; de-
cem anteos de
centum. centum
de mille, &c.
Prel. Abb. in
remembres by Mr.
Selden in his 2^d
view of Chap. 3.
p. 455.
(2) De re pore
Senat. 119. Toma
10. p. 129.

(1) De militia, de negotio, & de artificio redde decimas. *Caus. 16. quest. 1. C. Decima. Quid est fideliter decimas dare nisi ut nec prius, nec minus aliquando Deo offerat aut de grano suo, aut de vino suo, aut de fructibus arborum, aut de pecoribus, aut de heris, aut de negotio, aut de ipsa venatione na. Caus. ead. Quest. 7. Ca. Quicumque De vino, grano, fructibus arborum, pecoribus, hortis, negotiatione, de ipsa enim militia, de venatione, & de omnibus bonis, decimae sunt ministris Ecclesiae tribuende, ita ut qui de his eas solvere neglexerint, Ecclesiastice censure debeat percelli. Decret. Greg. lib. 3. tit. de decimis, cap. 12. (2) Vid. Excep. Egberti, can. 100. in Spelman. Conzil. pag. 168. (3) Capitula incerte editionis, cap. 15. in eod. p. 610.*

mas non habeas fructuum terrenorum quod habet agricola, quodcumque te pascit ingenium Dei est, & inde decimas expetit unde vivis: (good Reason and Divinity both;) *De militia, de negotio, & de artificio, redde decimas;* *Aliud enim pro terra dependimus, Aliud pro usura vite postulamus.* If thou hast no Land, Render of that thou hast, of Gods gift whatsoever, is the sort of it. But all these are without my pale. And so it may be is also that of the (1) Decrees and Decretals; and yet perhaps not neither, by reason of the last Provision of 25 Hen. 8. 19. which speaks doubtfully, and whether all Canons before of force remain not yet so here, (that are not against the Temporal State,) as well as our Provincials, is at least from the words very dubitable. But our own bindest strongest, like our English Oak which admits no compare; So nor for strength and certainty to us our English Constitutions. Look then at first far back, and even so far as before the Conquerour, somewhat was thought on here tending this way. Some Canons I finde or Rules of good credit digested and left to us under the Title of *Excerptiones Egberti*, who lived about the year 750. (soon after the first faith of the Nation,) and had it seems for his own use and others laid together sundry Rules which he judged most expedient to be followed; among which, (after for Tythes in general) for Personal. (2) *Decimae igitur tributa sunt Ecclesiarum,* (saith he) *& egentium animarum. O homo, inde Dominus expetit decimas unde vivis. De militia, de negotio, de artificio redde decimas.* Tythes are a Tribute due, Therefore pay of all thou livest by: of thy spoiles, of thy work, and of thy handicraft. Of about K. Knouts time were also some other (3) affording reason again with command, and equity mixed with true piety. *Admonendi sunt qui negotiis ac mercationibus rerum invigilant, ut non plus terrena lucra quam vitam cupiant sempiternam.* Merchants and Tradesmen are to be minded that they look not more after gain then godlinesse, their estates then their souls: and a little after, *Sicut ab his qui labore agrorum, & ceteris laboribus victum atque vestimentum quarunt, & necessaria usibus humanis acquirere instant, decimae & elemosinae dande sunt; ita a his quo-*

que qui pro necessitatibus suis negotiis insistent facendum est. Unicuique enim homini Deus cedit artem qua pascitur, & unusquisque de arte sua, de qua corporis necessaria subsidia habet, anima quoque quod magis necessarium est, subsidium administrare debet. As of Husbandmen and day-laboureis Tithes and Almes are to bee spared, so of those that deal in any Trade; for God gives to every man how to live, and what from his gift man so uses to provide for his body, much more ought he therewith to be at cost to provide for his soul. But the most observable of this intervall was that given before from King Edwards Law, (1) *De hortis & negotiationibus, & omnibus rebus quas dederit Dominus, decima pars, &c.* of merchandise, and All the Tenth to be returned to God that gave: which yet because it was there both given and repeated needs not here again to be transcribed and recited. Remembered be it that whereas before the Common Law was said to be made up of certain pre-existent materials, They as to this particular may have been such Laws as these: Whereas also those parts were after made up into one common body by King Edward, in giving this he may seem to have given the extract of Those (of this Nature before him:) Lastly, whereas those so distinguished Laws had after severall Scenes whereon things within their severall charges were acted, what was Ecclesiasticall being separate for the Consistory, what Temporal left to the Shire Court, &c. Therefore we may not now reasonably hereafter look for any thing more of these personal Tythes but where they were, that is, among the Synodals and Provincials, and there indeed we finde, nay we have both found and already given them before remembred and recited: as, What said (2) *Rob. Winchelsea? Statuimus etiam quod decima personales solvantur de artificibus & mercatoribus, sc. de lucro negotiationis.* We appoint personal Tythes be paid by handicrafts-men and merchants. *Similiter etiam de Carpentariis, Fabris, Cementariis, Textoribus, &c.* and of Carpenters, Smiths, Masons, Weavers, and all workmen. What (3) said he again? *Decimam lactis, &c. venationum, artificiorum, & negotiationum:* of hunting, handicrafts, and merchandise. What said *Simon Mephram* and

(1) In col p. 611. cap. 2.

(2) Findwood lib. 3. tit. de decimis cap. 20. nam propter.

(3) Ib. Cap. Sancta Ecclesia.

70. *Stratforth*, but to confirm and inforce what before he had before stated? and aswell might then those that were predial and acknowledged due have been denied as these, They stood both on one bottom. So *Edward 6.* found them, and did by no means raise and impose this personal burden, but bound it on to continue fast where it had been, and was; insomuch that in stead of barren words, and empty lines, a special emphasis is to be acknowledged in that part of the clause laden with much Truth, where Every person exercising merchandises, &c. being such persons, and in such places as have within forty years past used to pay Personal Tythes, or of Right ought to pay (save day labourers) is commanded yearly before Easter to bring in their Dues. They were used to be paid: Then as Now, and Now as but Then, they must and ought. To make the Payment whereof more sure, or supply the defect, there was appointed a distinct (1) mortuary, of those that were not very poor, for compensation of such personal Tythes subtracted. The force of all which things, and particularly the two Constitutions before mentioned was such, even before the statute, that as grave a (2) Lawyer (as I believe) any lived in H. 8. time, though he wonders at some particularity here, that they may be demanded, and if denied, sued for, whereas in other places they are left it seems to the Debtors conscience, yet he avers their Duenesse, describes their Nature, speaks of them as of known Right, no more questionable then predial; And what should have been done about them if the intended Reformation, so often spoken of, had proceeded to maturity, might be guessed by that which was. For (3) four

(1) Si decedens tria vel plura cujuscunque generis in bonis suis habuerit animalia, optimo cui de jure fuerit debitor reservato, Ecclesie sue à qua sacramenta recepit dum v. v. et sine dolo, fraude, seu contra dictione qualibet pro recompensatione subtractionis decimarum personalium & oblationum secundum melius animal reservetur post obitum, &c. tit. de consuetud. cap. statutum, per Simon. Loughan.

(2) St. Germaine, lib. 2. Dial. ult. fol. 72, 73.

(3) Magnam indignitatem habet à tenuibus & laboriosis agricolis decimas annuas Ecclesiarum ministris suppeditare, mercatores autem opibus affluentes, & viros scientiarum & artificiorum copiis abundantes, nihil termē ad ministrorum necessitates conferre, præsertim cum illi ministrorum officio non minus opus sit, quam colonis. Quapropter, ut ex pari labore par consequatur merces, constituimus ut mercatores, pannorum confectores & artifices reliqui cujuscunque generis, ac omnes qui scientia vel pericia qualescunque lucrum percipiunt, hoc modo decimas persolvant: pro domibus nimirum atque terris quibus utuntur, & illarum ratione decimas prediales non solvunt, quolibet anno dabant annue pensionis decimam partem. Reform. L. Eccles. tit. de decimis. cap. 14 p. 121. vid. etiam cap. 13. 1, 26.

severall

severall Chapters are taken up there about the disposition of them, the heads whereof were given before, and into the Contents of one of them this very Statute is taken and authorized; If there had been a new Canon Law, those Chapters should have been part of it; As there is none, the old is of force, and in all its power beside the Statute, and that again by Statute. Neither had the thing onely consideration in Books; we finde regard given to it in the Acts of Men, and the World busied, not to say very much troubled about the Weal: that came in by them. The great and vexed Controversie in *Oxford*, in *Henry 8.* time about *Fr. Russell* and his Doctrine which took up the learned Disputes of the University there, and smooother Consultations also of the Convocation at *London*, and after was transmitted to *Rome*, and there not ended, was onely about the necessary and fit Receiver of personal Tythes; while he maintained, it seems, to his own advantage, and against the Secular Priests, that they might be given as well to the poor as the Church, as we say, to the Monk as to the Priest, (and then he stood ready as a Mendicant, as the Priest for his Parish:) They on the contrary to the Church onely, and so He and His were excluded. The determinations it seems settled (the *major* part) against him, and he for his error was enjoined to recant publicly at *Paul's Crosse*, lesse then the performance whereof would not serve the turn, and all the Pulpits in *England* commanded to ring of what an Heresie *Fr. W. Russell* had maintained (indeed against the Pulpits) about personal Tythes, now to be cried down by all opportunity, and the utmost of possibility. The Particulars I finde (1) related at large; the use I make of them is onely this, that These things Have been of Real consideration, not an empty Book Order, but such as had influence upon things and produced visible effect, the Consultations of Men having been taken up about the disposall of the seen fruit of them, much busying, yea not a little troubling the World, for long since, and so long together, and so no doubt things stood to *Edward 6.* time, and so he found and left them. Whereupon, and that ancient rooted Right (spreading likely further, as might be found by further inquiry, if it were also need-

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(1) By Mr. Sciden in his History of Tythes, cap. 7. Sect. 5.

The Civill Right

ful,) he settled his new vote and order of confirmation as it were: What, to make personal tythes due! to give them life and raise them to being! Nothing less: to revive and quicken the Law, that dull men that were to pay, and had wont, might be roused up to a ready and obedient performance of that which was their ancient known duty, to awaken justice, and force backward men to bring in their publick tribute, which though for Gods service their worldliness had rather perhaps were left out or let alone: Due they were before; This vote of publick power onely cleared the channel that the in-come might be it self, and come in fresh and free, without impediment, for which His words and Act reach, we see, fully his meaning.

By occasion of which clause of such import, thus much: Thus much of Personal Tythes, And thus much also for that last binding Act of State both for personal and predial, in: & 3 *Edw. 6.* Behither which is little but the implying Petition of Right, (in the grant of All mens, without doubt meaning These,) That other was the last, clear, full, expresse, purposed and direct binding order. Not yet of no force; Even for it self; though the chief strength (beside the Legislative power of the Land, here drawn into Act) is in a broad and before; The Root that supports and cherishes most powerfully (both predial and personal still,) laying farther in the Right created by ancient Constitutions, deeper then possibly can be thought by any new declaration. For we shall seldom meet with a tree that planted the last year hath attained much strength; It must have time to root and settle, before it can be able to endure the shock of a tempest, or make good its being against any forceable opposition: So the best and usefulest Constitutions of State are those experienced firm ones, that have lived, summered and wintered with us, as we say, and given approbation of their agreeing with the soil by having safely endured there all influences; Settling and gathering strength, (as it uses to be, and Must) by degrees, and in and with time clasping in fast to be made one, & co-incorporate with the soil of a Re-publick. Rash decrees use to be as soon revoked almost as made, bespeaking
little

little but uncertainty at first both to themselves, and all things and persons that they are conversant about : Blessed are the days when the Aged decree Judgement, the ancient and experienced good Laws, I mean, are made the sure and constant rule of Righteousness. And even this Humane Ordinance hath so much in it of Divine, that it partakes of toward his nature who is Constancy and Immutability.

C H A P. XXVII.



Ut to go on to the mentioned Petition of Right, a great and bright star shining hithermost and very clear in the firmament of our Law ; whose allowance vulgar apprehensions still gaze at for the great and onely stabiliment of all, as indeed an excellent and needfull stay it then was, when it was, of the subjects tottering property : But to look upon it as the onely bank and bulwark against tyranical invasion, both the settler of Right and Giver; the knowing know there is more then twice ten times as much dispersed abroad (though in *latebris* to plain English Readers) as this, Nor could the supream power without breach of trust, and transgression of duty have before, (and so it may still) invade the peoples Right, or without injury have then (and so it may yet) do injustice and unrighteousness. A Bond this was upon the former Covenant, a new lock added to the former bolts and bars to keep out invasion from above from protectours, now explicitly, purposely, newly, and afresh confirming to all their old Rights, (no more,) And say which : The Merchants right, the Gentlemans Right, the Noblemans, the Free-holders, and why not also the poor Scholars too ? the Church-mans too ? whose work is Church-work, and his Trade and Calling publick, holy, heavenly duty : that so having his Due,

(1) *Περε το ευ-
 γαριον ας ευ-
 αγγελος. ο το
 κριτης. That ye
 may wait on and
 stick close to the
 Lord, 1 Cor. 7. 35*
 (2) *Ανεστη-
 εν. Not inbi-
 led and turned his-
 ther and thither,
 (as men se that
 are distracted with
 cares how to live);
 for violent are the
 prickings of flesh &
 blind to preserve
 it self, and self-
 loving nature will
 look about before
 it yield to be sup-
 pressed or choked.
 But that ye may
 attend this Thing
 alone, and serve
 yo^r now onely
 Master without a-
 vocation, it d.
 (3) It might have
 been by the same
 reason, wherein
 the Church had
 some speciall
 rights, and those
 contained in the
 Charter; Also
 privileges and
 immunities gran-
 ted there, &c. as
 before. Pray they
 therefore every man
 or sort of men may
 have their Owne
 And as much was
 after allowed: niser
 the generall word
 of Right, and ac-
 cording to the
 Laws and Customs
 of the Realm.*

he may the better do his Duty, having his Right, people may the better look for Theirs; and having his property to live on (his Living) secured him in peace, and with assurance, he may now (1) *serve His Lord above Alone*; and having nought of this vile, yet necessary world to interrupt and stop his course, he may now wait upon Him (2) *without distraction*. The rather considering what a prosperous and lucky hand he had in helping to procure as well the Charter, as this Petition, much of reason would stand on his side, that he should gather some of those grapes himself had helped to plant the sciences of, he should partake of the harvest he had sown, and reap some fruit of his own successful impetration; at least to have his own Right secured in that he helped to obtain to All, The Petition of Right. The title whereof gives: Petition exhibited to his Majesty by the Lords Spiritual and Temporal and Commons in Parliament assembled, concerning divers Rights and Liberties of the Subjects, &c. and The Contents, *Humbly shew unto our Sovereign Lord, &c. (the persons before,) That whereas it was declared (34 Edw. 1.) that no Tallage, &c. yet of late divers Commissions have issued, &c. And whereas by the great Charter, &c. no Freeman may be taken or imprisoned, or (3) be disseised of his Frechold and Liberties, &c. but by the Law of the Land: yet, &c. And some other things touching life, &c. Now they pray that the like may not be done hereafter, &c. All as their Rights and Liberties according to the Laws and Statutes of the Realm; and that all Officers and Ministers serve in their places accordingly.* Whereunto the Kings answer being, *That Right be done according to the Laws and Customs of the Realm, and that the Statutes be put in due execution, that his Subjects may not have cause to complain of any Wrong or Oppressions contrarie to their just Rights and Liberties*; This not satisfying, upon reply this second personal answer was added, *Soit droit fait come est desire*, Let Right be done as is desired; And this after expounded to be mistaken, if it were drawn to any other then the Ancient Rights and Liberties, which he willed, and no more. Where still we find Rights

foundings

founding all along, and concession of Them, and in answer
 to such a Petition, the particulars are within the possible and
 easie view of every English mans eye, and they fitly All march
 under the Head of the Petition of Right. Now then I in-
 fer and argue: What is that was here granted? Was it not
 Right? Right to All? and one mans Right as well as ano-
 thers? Did not the whole Commonalty petition? Were not
 All heard? Was not All granted, and to All? And if those
 that wait upon the Temple of the Lord in *England* in his ho-
 ly Service, had thereby then, and yet have, they and their
 successours an Own and Right, was not this then meant to
 be granted? and was granted and settled upon them There-
 fore thereby, nor can be revoked, but by the revocation of
 this, or a part of this Concession of Right? Each mans wrong
 is of the same nature, guilt, injury, crime, and grievance,
 Nor can they ever be interpreted but partiall and unjust sha-
 rers of such a claim to themselves, as, Any others having e-
 quall part with them therein, they can be contented earnestly
 to strive for their own, and will not be denyed, but for those
 others, think they may be excluded, (or help to exclude them)
 at pleasure, and no matter whether they partake of any share
 in the common allowed stock of Right. As if it were Their
 to steal, but not from some: Injury to defraud, but the Red
 or Gray Coat, not the Black: The Law must hold in some
 cases, what need it in other? to retain him in possession of
 his Right that hath nine parts, but not him that hath right
 to the Tenth; One mans Own may not be taken away, nor in-
 juriously invaded, but his Neighbours may, (that holds by the
 same Charter,) and himself outed, or spoiled, or wronged at
 pleasure, and That shield is large & strong enough to protect
 against all assaults the former, for the later is infirm & narrow,
 though it were seen to be made of the same breadth, strength
 and firmness. What equity is this? Should not every ones
 case that is the same be alike, and every Childes part equall
 in the same stock of the Common-wealth? Murmurers were
 in the Apostles time, and discontented fault-finders no doubt
 in ours; But let no private worldling be heard as speaking
 reason, that Right is wrong, or the expectation of this Right

1 Tim I. 9, 10.

is now to him and others grown burdensome. There is none fit to judge, who is able to say, Any part of the Law is Burdensome. Exactions are burdensome, injuries are burdensome, oppressions, spoliations, depradations, undoings of those that are innocent and quiet in the Land, All iniquity is generally burdensome: But the Law is a gentle yoke, Justice lovely, Right a favour, the dictates of these never were nor ever can be truly Burdensome; Unless, as Gods Word says, *to the disobedient and lawlesse*: ἀπειθείς καὶ ἀμαρτωλός, *to the irreligious and sinners* (that have no true fear, or worship of God, for this would teach to obey every Ordinance of Man for the Lords sake;) ἀνόμιος καὶ βεβήλος, *to unjustified and profane men* (that have never known true purification, whatever they pretend;) *patricidis, matricidis, homicidis*, (fit company, 'tis pity they should be parted;) To *Whoremongers*, also to *Plagiaries, deceitful liars, forsworn liars*, and such other; To all these the Law is Burdensome, Blame them not, they are weary to beare it, 'Tis a beam to their backs, and lays on fast and close, wrapping them under everlasting as well as heavy inconveniencies: But that the Law is burdensome to any Just man, can hardly be believed by any wise man. 'Tis Gods great blessing to a Nation, it makes rich, happy, safe, and quiet where it comes; An humane Oracle for deciding humane doubts in matter of own and equity amongst men, the voice of Justice, the measure of Right, that gives to every one His, every one something, most men enough, all whatever they enjoy; Allotting upon grave consideration what they should have, why they should have, how much they should have, why no more, and generally upon good reason, why things throughout Be as they Be, (if our wisdom drew deep enough to fathome the reason of her profoundly prudent consultations, resolutions and dispensations) and shall we yet say, That Law is burdensome? My neighbours will is burdensome, his covetous desire is burdensome, his unjust, wicked, worldly ambition may be, to sit Umpire on my estate, to inquire what I have, to determine I have too much, but I shall have less, the superfluity of my abounding right (which is but one part of ten to keep me alive to serve God

God in his Church already, whereas he has the other nine to serve none but Himself, or perhaps *Venus*, or *Bacchus*, or *Mammon*, must be pared off to piece up supplies for his riot and prodigality, to feed the greedy worm of his covetousness, or rather to help fill up the wide and insatiable gulf of his craving ravenous and cruel soul; This were indeed, what were it this were not heavily burdensome? But shall I serve the Lord Christ with such an inside? Shall I profess my self a Church-member, yea, a member of Christ, the Childe of God, and an Inheritour of the Kingdome of Heaven, harbouring in my bosome a nest of such unreasonable, griping, cruel, carnal lusts? Shall I go on to read the Scripture, profess the Light, hang on Jesus Christ and ail his Ordinances, with pretended love to his Law, and grudge or subtract any mans known worldly dues, refuse to give every one his own, detract from the humane ordinance, and dare say in any case Right is wrong, or Law burdensome? Shall my turbulent, greedy, envious, unruly passions prevail with me so farre to make me think my neighbour has too much, though it be his Own, I must cover it, I will have it, Nay, Gods Minister has too much, of his known Right, I cannot temper but I must covet my neighbour goods, That neighbours goods, (1) Gods Ministers Right, Rob the Church, yea, perhaps rob God, and starve, or occasion the starving of souls by withdrawing that which should warm the bloud and quicken the bodies of those should and would feed souls in present, and discourage those that are to come in hereafter? furthering in the least degree or upon any pretence by my wilfull parcimony, that the thing we have so long feared, may at last fall upon us, That children may cry for bread and there be none to give it them, a worse famine may pinch us then that of bread and water, even a famine of the Word of Life, that hungry souls may run hither and thither for meat, and grudge being not satisfied; from Parish to Parish, from one empty Church I mean to another, for the Ordinances of Life, and none be found in Zion to comfort her children, a well-instructed Teacher in *England* be as rare as was a man in *Israel*, and because no more means is left to sustain his natural life, One Preacher must

(1) Let a man so account of us as of Ministers of Christ, and remember of the mysteries of Gods Cove-
4-1.

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must serve for twenty Congregations. Away *Pluto* and *Mammon* ! Let *Judas* and *Achan* be for ever separate from the Congregation of the Lord ! Cursed be *Ananias* and *Sapphira*, and all their brood ! Let their posterity never find fig-leaves to cover the shame of their sin in this world, nor any thing but Gods mercies and Christs merits to shelter their guilty souls from condemnation in the world to come. Let me have ever light enough to know mine Own, Justice to give every man his Due, Religion to direct, I Ought to do so, Prudence to measure it out by the onely wise and safe Law, and either cast away my Bible, (Gods Law,) out of my hands presently, or cease eternally to covet my Neighbours goods. One word also in the spirit of meekness, to him not hitherto thought of, that is, I take it easie enough to be led, but as it falls out miserably out of the way, that follows the light of his eyes, and they guide him to errour, urging the Petition of Right for every ones and his own, and yet crying down tythes thereby, which being a Right can certainly have no discountenance, but must rather have a firm, consequentiall establishment by that Petition. *Philip, Philip*, understandest thou what thou readest ? Do but say, I pray thee, what is it thou so importunately callest for ? Is it not for Righte Civill Right ? Every ones ? Thy Neighbours as well as thine own ? And Christs Ministers, if he have Right, yea, Civill Right, hereby to his Tenth, as well as thou to thy Nine ? If this, why pervertest thou the right words of the Law, destroying again presently what but now thou buildedst up, and by or with thy hoarse and importunate out-cries for this Petition, endeavourest to cry down tythes thereby, which being a Right (sure Mans right is not Gods right) cannot but have thereby a clear and evident confirmation. Is not ones mans right of the same kinde with anothers ? and as good as anothers ? Must not thy Pastors have been included in All ? Or, couldest thou be content to have his little portion understood at least to be struck out of this book of temporal life to augment thy part, to a proportion of ninefold bigger then His already ? What equity were this, or shew of Conscience ? Suffer I pray thee the word of exhortation, and be not offended

offended if I tell thee the truth : If thou be a Christian indeed, thou wilt not entertain a gentle reproof with disdain, nor repay meekness with rage, storming at him that would by the grace of God, and according to the light given him, deliver out nothing to thee but the words of truth and soberness. Ask thy Lawyer, and he will tell thee : Advise with the Learned in his own profession : Consult with the *Potter* about the things of his own trade. There is never a Judge at *Westminster*, never a Serjeant in their Innes, never a learned Councillour or knowing man in this Land, but will assure that tythes are as due (besides the rules of equity, for work, and generals of Scripture, for competent maintenance) by the Law, the rule of Civil righteousness among us, to their due receivers here, as any rent, or rent-charge, debt or bond, (nor a benevolence, but a strict Right,) and that the settled and compleat body of the Law doth with as much unanimity, evidence, constancy, and aged consent agree to settle and say so for them ; and yet dost thou contend, and urge a publick grant of right as an argument to destroy them ? Those sages are wise ; They will not deny their books ; They cannot deny this ; Thou must consent to it ; Thou hast nothing to say against it ; Where art thou now ? On *Gods* side, or on *Baals* ? for *Christ*, or for *Mammon* ? For *Righteousness*, or *Unrighteousness* ? Wouldst thou but have every one have his Own ? Dost thou not covet thy neighbours goods ? Wilt thou own the power of as much Religion as in one verse of one Chapter of the whole Bible ; Render therefore to every man his due, *Rom. 13. 7* ? Keep to this, I desire no more : I know I have gained with thy honest, thy sure vote for tythes, and for ever hereafter ; Hold to this Concession, and be constant, thou wilt never hold up an angry hand nor finger against them, or but for them, unless thou change thy minde to petition against the petition. Thou wilt not I suppose be wiser then the Law, mangle the Royall Grant, or deform that Petition of Parliament : If thou do, 1. Thou art unjust, because not impartial : 2. Inconstant, because even now thou chocest to submit Hereto, and made it use of it : 3. In plain terms little better then a fool ! Bear

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with

The Civill Right

with my plainness. thou wilt rather thank me for it, when thou shalt see I intend not Reviling, or Reproach, but necessary home caution and admonition. Resolve with thy self, There is none so highly such, and dangerously too, as he that thinks himself wiser then the Law: Which is, as a Lord Chief Justice said, *Summa Ratio*, the strength and Quintessence of Humane reason applied to the common good; and what must He needs be then that goes on the contrary part? that undervalues it? that opposes it? that censures it? and instead of obeying the Oracle, quarrels with it? Laws are made to be revered, not disputed of, obeyed, not judged, submitted to, not censured by every forward man, scarce by every Congregation of men, scarce by knowing, wise men: and who is he then that of his own private head dares busily controul and censure? abrogate and revoke, repeal and establish the whole or a part, (as much as seems good unto him, be it what it will) of a Wise Parliaments Petition, a dead Kings Concession, the Statute Law, the Canon Law, the Common Law, that whole body that hath ruled all actions and possessions here? Thinking, such a part may be changed, another spared; The great Charter was well thought on in some things; The Petition of Right was part as it should; *K. Edwards* old aged and revered Laws, that had so many requests made for them, so many bloody battails fought about them, and were wrested by the people into the Coronation Oath, may now be advised of: I see a way, not spied by any since Christianity came hither (and yet they had the voice of the Spirit, in the Word of the Gospel) of Civil Justice and Righteousness, I will make Laws, change Ordinances, reverse Rights, new-mould properties and dominions, &c. though all that is be troubled, &c. and the Petition for every mans right shall not hinder: What arrogance is this? What intolerable presumption? Does it become a private man! a single man! a simple man! Any man! Were not obedience better then this sacrifice? To be ruled by the Law, better then thus to quarrell about it? Say but this one thing, Every man shall have his own: and I have obtained my end, and wish all unsaid hath (to thy offence or otherwise,)

not tended hereto. Say but Right shall be done as is desired, (*Suis droit fait come est desire*, as the King:) I will not be wiser then the Law but follow it: I will not judge the Rule, but be ruled by it; 'tis the blessed Ordinance of God, whereto I ought conform, and must, and will, ingenuously, and fully, the whole and every part, and then we are met and friends. Especially the Petition of Right, let no one be defrauded of his part of that, No One, and then be the issue that God will give.

CHAP. XXVIII.



And now it may be time to look forward, but first a glance or two backward, that we may not lose our selves, to see the way we have already gone. I hope it is either made evident, or at least much hath been said for it, that Tythes are Civilly, Politically due; They are so, for they have been given; they are so, because that gift hath been confirmed: confirmed by the common Law (in its Cradle:) confirmed with the confirmation of King *Edwards* Law, confirmed by the Church Law, of Authority sufficient, and now lastly by the glances of the State. But by-blowes I confesse these last, yet as they have been set on, I hope reaching home, till of late some were direct in *Henry 8.* and *Edward 6.* time, (yet of force;) and so is also the Petition of Right, it being taken they were before a Right. Descend we now from publicke to private, and see what the Sages have said, who are either Law, or after next to Law. The Romans had their *Responsa Prudentum* taken into the Digests which although they were at first but the issue of private thinkings, given by single men upon occasion in decision, yet with time they got credit, and being found usefull, and meetly well agreeable with reason (the great Standard even of Rules,) They were at last taken into the Rule, and ur-

ged as the twelve Tables, or the *Senatusconsulta*, of original and ruine Authority for themselves: So and by the same degrees have some mens credits and sayings been advanced with us, whose *ipse dixit* is next to Oracle, and their private voice so highly advanced as to be for Authority and Rule next to the Publike of the Kingdom. We shall not be long nor curious in this search; for still the Publike speaks lowder to Credit then any Private; and why should we care much for Silver, when we had plenty of Gold before? or look after even the Judges, when their Masters stood ready, yea the Rule of the Judges Masters in publick Agreements subservient to justifie our Assertion and undertaking?

And Lord chief Justice *Cook* is here first, (for we will now take leave to proceed *ordine retrogrado* according to licence reserved) He is now become almost a good Authour; but because his opinion and practise are both in fresh memory with many both as to Pleading, Councel, and Judgement, the les would therefore be said of him, because known. In 2. of his *Instit.* alone he so comments on four ancient Statutes, sc. (1) *Circumspecte agatis*, (2) *Articuli Cleri*, (3) the 18 Ed. 3. 7. touching the *Scire facias* from the Chancery, and that (4) of 2 Edm. 6. 13. that none that knows the occasion can well forecast any doubt of the event; none that considers the Text can much doubt of his Comments, unless he will make so crofs and absurd interpretation of his likely meaning, as that he chose his *Theme* to go against the *Suppositum*, or meant to darken and contradict what was taken in hand to expound and illustrate: such were *Commenta* indeed rather then *Commentaries*, strange inventions: but He raised his Doctrine according to his Text, and prosecuted it punctually, as he had raised it. Let them heed him well who alleadge him frequently, accounting him Authority in one part as well as another, or else the World will account them I know what, Partial, I mean; That All; and that's true enough, That they do but in stead of representing his sense fully as they finde it, pervert it, picking a Posie perhaps of the sowrest flowers, and leaving out what is not to their advantage, or to their disadvantage, innuate, that is not, which perhaps they would not have. Sure
he

(1) pa. 489, 490.

(2) pa 610, 611, 612, 619.

(3) pag. 619, &c.

(4) pag 648, &c.

He thought, spake, wrote, and judged, that Tythes are civilly due, when he shunned not to declare they were every where due, (1) *Jure divino*. To omit his own References to his Reports. Be Sir *Thomas Smith* next, a Doctour of both Laws and a principal Statesman; His Description of *Englands* Republick passes with good credit, in the last Chapter whereof he describes the Court Christian, acknowledges its jurisdiction, sends matter of Tythes thither as a part of the Work, and if once he had them there, he knew, being not onely *requir'd*, but *requisitionariis*, what even to Mint and Cummin, would become of them. The Authour of the Dialogue between the Doctour and Student is (2) said to have been Mr. *St German*. It was wrote in *Henry 8.* days, not toward the end, and for the solidity and depth of it may passe for one of the very excellent and singularly judicious pieces of that most excellent Learning. Now He admits Tythes as consequentially due upon that account of (3) Ecclesiastical Jurisdiction, and this reducible to the second ground of Law received here, which is, the Law of God; and though the Student cannot afterwards walk away with the Doctours *jure divino*, yet by *Ours*, *Positive*, and *here*, he makes no question. For by the *Law of Reason* (one of the Grounds he had made of the Law of England before) he would have somewhat; for the Labourer is worthy of his hire, and then by the *Law of the Church*, (This I question not how reasonably, but thus 'twas settled, and the Constitution prevailed,) And he gives reason for all: For (4) there is no cause (he sayes) why the People of the new Law ought to pay lesse to the Ministers of the new Law, then the People of the old Testament gave to the Ministers of the old Testament: For the People of the new Law be bound to greater things then the People of the old Law were, as it appeareth, *Matth. 5. 20*. And the sacrifice of the old Law is not so honourable as the sacrifice of the new Law is; for the sacrifice of the old Law was onely the figure, and the sacrifice of the new Law is the thing that was figured; What was the shadow, this is the truth. And therefore the Church upon that reasonable consideration ordain'd that the tenth part should be paid for the sustenance of the Ministers in the

- (1) Report 2. fol. 49. b. in the Arch. Bishop of Cant. C. 36. annotated by a London Adverser in his late answer to a Discourse about the alienation of Tythes, p. 17. And in the same Report fol. 45. in the Arch. Bishop of Winch. Cases, alledged by Spelman. de non remission. dis. Eccles. Sect. 16.
- (2) By Dr. Cowell in his Interpret. in the word Doctour.
- (3) Dial. 1. ch. 2. fol. 11. And in the new addition: to that Book, printed 1531. He tells us; In the Kings Bench & Common place they will offer no illine to be jured; especially he shewes how a person, where by he Right of the Tythes may be tried, howbeit that in the Exchequer sometimes they have done otherwise. Addit. fol. 14.
- (4) Dial. 2. chap. 35 fol. 165.

new Law, as it was for the sustentance of the Ministers in the old Law. So howsoever it is a *Due*, and he is there discussing the equity of the Statute of *Sylva cadua*, which although he defend, yet no more, and in that enough, as before was said, speaking of it. For if there were Assertion, that a Prohibition should take place in that particular Case; there was implication in others it should not; a by-confirmation, here and there, and in neither can be doubt of what I desire. Ascend at next step up as high as *Fleta* and *Bracton*, for we are now among particular fallible men, the Credit of whose Vote is not to be compared with the Publick, and therefore we hasten accordingly, yet so as we know what sway these bear in Judicature, and that they over-rule the very Rulers and Judges: *Ego verò illos veneror, & tantis nominibus semper assurgo*; as I believe, after Sir Edward Cook most of the chief Justices have been ready to say, and I do unfeignedly. Let *Fleta* be first, and He (1) speaking of Contracts and Obligations by them, and an Action of Debt justly grounded upon both gives the *Tryall of Tythes* in that Court, will surely give *Them*. *Ex hujusmodi autem obligationibus, promissionibus, & stipulationibus oritur in curia Regis quedam actio, qua dicitur Placitum ex debito, eo quod spectat ad Coronam Regis*, saith he. But except, *Nisi sint debita à testamento vel matrimonio suborta: que quidem in foro Ecclesiastico habent terminari, sicuti & omnia que mere sunt spiritualia*; as Penance for sin, though pecuniary: So for Church Reparations, &c. 29. *Item si Persona*, (that is, that living Man, who as one seen and known, stands forth and acts for the Church, which is always in it self a dead Corporation, a *Suppositum*, or *Nomen*, without any real subsistence, and must therefore have a seen, known, living Executour, whose name may be used, and being cloathed with Circumstances under being and existence; In that name and under that Personality may do sundry things which otherwise conveniently could not; As give or take, gain or lose, do or suffer; the Church's Man, we may stile him; Rector is another thing (2) implying duty, and ground-

(1) Lib. 2. ca. 60.
Sect. 27, &c.
p. 31.

(2) Laicus igitur presentat ad

Ecclesiam vacantem ut presentatus Ecclesiam Regat, & Episcopus eam dat, sc. presentatum admittit ad Regimen, & instituit. *Bracton* l. 2. c. 23. f. 53.

ed upon supposition of Power. Now if that *Person* or *Church* *Man* petat à *Parochianis* suis *debitas decimas & consuetas*, (in the very words of the Statute of *Circumspecte agatis*) *vel si Rector agat contra Rectorem de decimis majoribus vel minoribus, dummodo non petatur quarta pars valoris alienius Ecclesia vel decimarum*: (for then, (if also the Churches be of severall Patronage, not otherwise,) the *Indicavit* takes place, and the Right of Tythes must be tried in that of the Advowson, between the Patrons whose Lay *interesse* is in question :) And of these all, *Stat. 32. Hæc autem præcipuè in foro Ecclesiastico habent terminari, non obstante Regia prohibitione*. It seems the nature of them was such, that if they were drawn aside they could not rest there, but must return to their proper chancell, and with other things of the same nature have properly and together their discussion and determination in the Court of Religion: And remember this all along, That, as the Philosopher sayes, that which gives the Cause (sufficient) gives the Effect; That which gives the means to compass such an end may be interpreted to allow and give virtually that end will be so wrought in and brought about by those means; Even so mediately, that which gives the Jurisdiction gives the work, and effect thereof; That which gives the Triall gives that which will come of the Triall, be it what it will; (virtually, and in the sufficient and necessarily producing Cause) Which is also of use in that which follows from the same *Fleta* in his Citation of the Statute of *Westm. 2. cap. 5*. Where approving the Clause before of the *Indicavit*, and ruling power thereof, he yet (1) makes the bottom, after discussion in the Kings, to be the Churches Court; and as that shall sentence such or such a Patron to have right or wrong in the Advowson of Tythes, so after the binding sentence, though regulated before, must be formally given in *Curia Christiana* for them.

9. *In casu autem quo Rector Ecclesia impeditur ad petendas decimas* (saith he) *in vicina Parochia per prohibitionem de Indicavit, habeat patronus rectoris sic impediti breve ad petendam advocatorem decimarum. & cum disfratatione verit, procedat postea placitum in Curia Christianitatis quatenus disfratationum fuerit in Curia Regis*. The final sentence must be here, though

(1) Lib. 5. ca. 17.
sect. 9. pag 330.

(1) Lib 6.ca.36.
sect. 7. pag 418.

(2) Cap. 37.
Sect. 3. p. 429.

(1) Before p. 202.

(2) Bracton. l 5.
tract de excepti.
ca 10. fol. 908.

though the discussion be elsewhere, as upon a Verdict at the Assizes the Judgement *Postea* is given at *Westminster*, though the Trial were in the Country. Afterwards, then which nothing is plainer, treating of Exceptions to Pleas, among the first is the Court (1) *Erit igitur a digniori incipiendum, sicut a Jurisdictione judicantis & persona Judicis, cum ipse sit pars principalis Judicii.* And what is that? it follows, (2) *Cum autem diversi sint Judices, estimare debet quilibet an sua sit Jurisdictio, ne falcem ponat in messem alienam. Index autem secularis de rebus spiritualibus cognoscere non debet.* (The greatest reason in the world) *Decima autem in quantum decima, & res testata in possessione testatoris tempore obitus sui existentes, &c. in foro ecclesiastico debent intentari.* In a near case indeed, not: as if the Tythes have been once sold, for then *Per venditionem jam translata est spiritualitas in temporalitatem, & quo casu locum habebit Regia prohibitio ad inhibendum judiciis ecclesiasticis ne in cognitionem hujusmodi catallorum procedant, &c.* If sold, they change nature, and by consequent Trial: and much there follows of such prohibition and permission, but of Tythes as Tythes nothing but as before. From (3) *Bracton* (to come to him next) four of five places were given before for permission of Jurisdiction decimal hither, which have all their use here, to which may be added this one, (for those I repeat Not, but remit to them) which speaks thus. If a Clerk wrong another of Tythes, a Prohibition shall not lay ('tis in the Treatise of granting Prohibitions,) because there is no wrong to the Patron in his Lay fee, which is his Advowson; (4) *Sect. 6. Item locum non habebit prohibitio de recenti spoliacione, ut si clericus clericum spoliaverit de decimis vel aliis de quibus cognitio pertinet ad forum ecclesiasticum, quia de hujusmodi restitutione non generatur prejudicium patronis, quantum ad jus advocacionis.* And this granting the scene of Trial is still upon the matter a granting of all: the sending for Trial to where before it is known what will be there said, a virtual approbation and confirmation of what shall be there done; As he that refers to the Admiral Court does, upon the matter like and approve the Civil Law so far forth there ruling. And our state having many Rules *de passis*, but few *de legatis*, or of Wills

Will themselves, sending, in its Own want, to Another place, and willing the Rules of the Canonist or Civilian shall take place, does interpretatively speak further, That what is there done and decreed is just, and by it self approved ; Even so the party grieved appealing to the Temporal Court, making his Case known there, Praying relief which is denied, His tenth shee or sheaf are like to be taken away, and upon Complaint, nor Parliament, nor Common Law afford him any comfort, but their Ministers or Consultations and Resolutions send him back to where the taking away shall be allowed ; What is this but mediately, remotely, and implicitly, but fully to approve of what is there done ? For they are presumed willing to do justice, and known able, but not interposing, do consent and partake in the decision they order to, be it where and whatsoever. So that it is no vain suggestion so often repeated, and necessary to be always understood, that the making good the Jurisdiction is the securing all, for all comes along with it, as *Mahomet's Alcoran* will bring a long Tenth with it to Religion and for Conscience in way to his Paradise, (but no Wine upon earth) and as the entertaining the Jews Law includes Circumcision, Pasover, Pentecost, the Sabbath too, and even Decimals. And so have been the proceedings with us, That Court, and those discussions have used to bring in Tythes effectually, and not but ever ; Ask either the Lawyers or Owners, they who did judge or were judged, They both found the transposition of Wealth and Riches to be accordingly: Prohibitions if they were often granted, were seldom asked, and always denied, but if according to these Rules : The Judge was *Lex loquens*, the speaking Oracle, and nor did, nor would oppose, or speak or do otherwise : & to their cost always men found it to be most true. In the Manuscript before mentioned, with *Magna Charta*, and the other old Statutes, are also the Writ of *Indicavit*, and many other such Prohibitions grounded upon the same Reasons that are alleadged in the Register, and leading to the same end, *sc.* of with-drawing Lay-inquiries from the Court Christian, the subject matter whereof is mostly Tythes, which shews they permitted in other Cases the Triall to go, where it would, and certainly did carry them. In the usuall

(1) Et dicitur
ideo Breve, quia
rem de qua agi-
tur, & intentio-
nem petentis pau-
cis verbis brevi-
ter enarrat. Praet.
de Acton ca. 12.
Sect. 2.

(2) Fol. 483.

(3) Fol. 485.

(4) Fol. 489.

Registers are inhibitions enough composed so, that none of them will vary any thing; they are (1) Briefs, and give the Brief of the thing in triall: In the Book of Entries The Declaration sets forth great Complaints for suing in the Court Christian for tythes of Oakes under the Title of *Sylva cadua* to the disturbance of the King, &c. but meddles no further, fol. 226. & f. 489. Restraints there are enough for suing for (2) Annuities because they were *De catallis & debitis quae non sunt de testamento vel matrimonio, &c. in lesionem corone & dignitatis nostrae*: but Tythes are spared, not a word of them. So far (3) Debts, alleading this reason, and under this danger, *Marchinans nos & coronam nostram exheredare, & cognitionem quae ad curiam nostram pertinet ad aliud examen in curia Christianitatis trahere*: so for defamation, so for demanding Tythes of Lands discharged. But not else: so for recovery of Tythes (4) set out, and become Lay Chattels, yet so as in All still, no pretence was to impede the Jurisdiction of known due Tythes; but if the Court were extravagant, and would meddle with what was Lay, then clog it with a prohibition that it might not exceed its bounds; otherwise let it go on and proceed freely and fully without any manner of disturbance. And this I say, hath been the known way of proceeding; view their Books, ask the Lawyers themselves, they will allow (though they may finde some fault in my expression) the reality of things, and that what I aim at is right, though I may fault in the way of expression: Nor is any thing more certain then the Restraint of their Restraints, the Prohibiting of their Prohibitions, that they should not step forth to hinder the Court Spiritual in that was such, or belonged thereto, the certain Consequent whereof was a known Recovery, and translation of one fliee, sheaf, lamb, or thing whatsoever of ten, from one man to another. This was a little extravagant, but I providently forecast, and conditioned not to be tyed too strictly to Rules of Method though of mine own making: Too much exactness may be as incommodious, as altogether loose: This belongs to what I was upon, the Jurisdiction of Tythes, and thereby right: and to the reflections of the Temporal State, as it stood separate, and favouring glances (of which sort onely

is all in this Cell we may properly look for) and these, though not alleading one quarter of that is, seem to make good what was undertaken abundantly.

CHAP. XXIX.



AND this of the first branch of Donation, made out by many subsequent confirmations, before, under, by, and since the beginning of the Common Law, as well before the Conquerour, as since under these four heads of, 1. The Confirmation of K. *Edwards* Laws, (wherof these were a part :) 2. The Church Decrees, (authori-

sing the King, licencing the State, looking on and approving all the other power that was :) 3. The Acts of Parliament, such as looked this way out of their direct way from the great Charter to the Petition of Right, *inclusivè* :) 4. The Learned Expositors, taken for Oracles of Law particular, as *Cook*, *Fleta*, *Bracton*, &c. Adding some hint of proceedings accordingly, and especially asserting throughout the Ecclesiastical Jurisdiction for them, which will alone induce and make good all the rest. All which together has been so much, and the Roots of this Right so far shewed and evidenced to be spread hereby, that few mens estates I beleieve can hardly shew, or colour for the like, and yet the men possesse and enjoy what they have in peace and firm security: for through all the good old Laws of the Land these roots are hereby manifest to have been dispersed, and as it were through every part and member of our English State and Corporation; Fees, Socages, and Serjeanties are but of yesterday, the Children of Power rather then Right at first, and take their utmost date on this side the battle of *Sanguelac*, besides age and to us unusefulness, affording other infirming considerations enough; Mannours and Fee-farms of not much greater reason and equity; and both Copy and Free-hold chiefly grounded

grounded on (as they are come to us, & understood to be possessed) the *Word* of the Law: But these were voluntary Concessions of the highest powers, in their solemnest meetings, long since, upon so reasonable consideration, as to establish the doctrine of the Bible, (and so they yet stand to beare it up like the pillars that supported *Solomons* Ivory Throne,) Behither and beyond the Conquering day have held up strong and fast in despite of all storms that have been since our Nation believed the Bible, (whether to decay with it time will shew,) and if the reasonable and continued, willing and authorising powers of the Nation, all of them, could by their passions (the surest ground) create a Right, Here it must be *Sure and Firm*, such as the like is scarce to be found again in our Community. All could not have been deceived, nor force in every thing 'tis very like mis-placed: Laws, Canons, Acts, Ordinances, Decrees, Statutes, could so many effectual, and in other cases sufficiently made Rules of Right be here made, and yet not made, and yet have born rule with obeyed power? If Civill Right be stood upon, could All so Many operative and continuing causes thereof have wrought from time to time kindly and vigorously without any effect, or but *Musi* contribute and do what humane Passions and Concessions could, or any thing below the footstool of Gods Throne? The *Divine Right* I confess is of another sort, more awful, it separates clearly to *an higher kinde*, and we look upon it as (more venerable,) *founded in God*, and partaking therewith of his constancy as well as holiness, must be always without shadow of change *the Same*, Nor can be touched upon rudely with profane hands without a *Relative violation* of that Majesty above from whence it proceeds: (And Therefore men should be very wary how they affixe this seal of *Heaven* to every *Imagination of their Own*, stamping the Character of Divine Right upon disputable opinions, entituling God thereby to their persuasions, perhaps errors of fancies, and but what they strongly conceive must be Thus of equall authority with Divine Oracles: Highest presumption!) But speak of *Humane Right*,

what

what has its firmness whence all lower titles and inclosures have, the agreeing *Acts of Men*, and *Mutual Humane Stipulation*; Of this sort I believe we shall seldom find any thing better grounded or faster settled then This, (And if seconding and conspiring rules of common equity can contribute any thing to the backing and strengthening of what is so placed and settled, these not wanting neither) and by as good title as any men have any thing with us, our tribe of *Levi* has here in *England* the same to the Inheritance of *Israel*. Equall in this too, that 'tis as good as the best, and if we had any better or higher, this would no doubt come out with the highest: But we have none; Our Tribes pretend not to a partition from Heaven; nor Dominion, or Property, Lordships, Mannours, or Honours to any thong to be cut out by but inferiour, lower, inconsistent rules of arbitrary good Will and Pleasure, guided by compact and Humane Wisdom; And therefore *Levi* hath no reason to take it amiss if in this he be not preferred above his Brethren to a right of another sort (if it should prove so) and higher strain having a touch of sacred and extraordinary, sealed from Heaven; But rather bless his God if he have done full out so much for him, as for others, (and as he did anciently heretofore among his own people,) giving him an *Equall Highest Claim and Right with the Best*, and as near *Divine* as any of his Nation. Which is both done and cleared certainly, and should serve his turn sufficiently and abundantly.

C H A P. XXX.



NOW proceed next to other helping supports amongst men, firm enough in other cases to create Right, if these hitherto should fall short of reaching that aime, though of their nature they seem not so well and aptly proportioned to so good an end, *and they are Possession, and Prescription.* Against which many things have been said by many, chiefly this, That they seem but a kinde of necessary Politick devices for *advantageous peace* and as it were *Quiet injury*; settling many a man in that he hath really and truly no just title to, and by consequent wedging *Him* out necessarily upon whom that right was devolved, or in whom it is inherent: Which yet notwithstanding, and all that can be said against them, they doe pass, and are allowed, and a man is thought rightly to possess and enjoy what by so, and no other means is come unto him or seated and settled with him. For though it may seem most reasonably *Mine*, (and is,) which another makes over unto me, or which falls to me by inheritance from another, or is escheat, (that is, reversed) or purchased, or given, &c. wherein by the contrivances of the Law, and reasonable devices of honest wisdom, that title which was really and truly existent in another is conveyed over unto me and vested in me, and so I have, as 'twere by removal, *His right*; yet when I shall have and enjoy any thing upon this naked presumption, That it is *Mine, because I Have it*; or, I *ought, Because Long I have Had it*; These as they are with cautions and limitations served in, do not onely put an end to many differences, and to more advantage then

what

what has more of strict right in it ; But having Law on their side, do no doubt bring along a true Right with them, and I may, by reason of that Law, (the foundation of All right,) have, enjoy, possess, defend and keep against all men, what is but *so settled upon me*, upon these and no other pretensions.

The first of which, the second ground in all of the Civill Right of Tythes, is Possession: a good plea in other cases, and so not to be despised here, which Others hold forth as sufficient, and One may as well as another, affording this argument not easie to be answered or evaded ; Tythes are belonging to our Tribe of *Levi*, *Because they have them* ; They are *Theirs*, *For they are theirs* ; They possess them, *Therefore they have right unto them*. For it prevails, (as said,) in Other cases, why may it not also Here ? Other Men defend themselves with no other shield, being in, against invasion, or recovery ; therefore may these : And it having his little loaf in his hand made up of few grains, Gods Minister account it *his Own* by Possession meerly, why may he not as well as his neighbour, who holds nine times as big upon this title often and by no other, and yet will not part with it ?

But for understanding these things the better, and therewith some other, As of Donation before, it may be no less expedient to premise here sundry things also of Possession in general ; The nature of it, the force it hath, the equity thereof, and sundry other such things, that so the generall doctrine may a little strengthen that particular we are to insist on.

Possession then, saith *Cujacius* out of the Roman *Gallus*, is the use of a thing, if so be we take use for the only holding and detaining it, not for the enjoying and using which are different and somewhat farther. I understand by it that we call *Having* ; as Things *Corporall* by taking them in our hands, *Incorporeall* by making use of them upon occasion ; which when we so Have and Handle the one, or make Use of the other, we may be said to *have, hold, detain, occupy, or possesse* them. Which such having and pos-

sessing

Placer definitio
Alicuius, Possessio est usus rei, si modo usum accipias pro detentione, sive ut in his libris scriptum est duobus locis, de retentione, non pro eo quod graeci *χρησιν* dicunt, ab usu enim haecmodi possessio plurimum distat. Paratiz. ad F. de adqu. vel amitt. poss. l. 1. e. Vid. etiam paratiz. ad Cod. lib. 7. tit. 32.

(1) Our Books
say, *A man may*
prescribe in modo
decimandi; but
not in non deci-
mando. Hobart.
in *Slades case*,
pa. 297.

selling (to note so much by the way, and in the very entrance) that it hath been here of and belonging to the Ministers of sacred things, as before, and to others in their right, is I suppose doubtfull to none but he that is ready alio to doubt, Whether there have been Harvests? Whether the Sun have shined? Whether the four Seasons of the Year have had their vicissitudes? or the *Blessings of God* been reaped by *Men* who have in gratitude returned to *Himself* some of the fruits of *his own bounty*? I except onely those who are to be excepted, and they are who claim effectuall exemptions; As those that succeed the Templars, Hospitallers, or *Cisterians*: that inherit a Custom for a *Modus decimandi*, or (1) *De non decimando*, (if in Corners this hath with us perhaps prevailed anywhere,) and some such other: But for the general, 'tis known the use hath been of as wide extent to *set aside One*, as to *carry home Nine*, as diffused as to plow, sow, reap, and feed, And *tanquam de jure Communi*, as was wont to be put into the Libel for recovery, Commonly prevailing all over the Kingdome. The Lord of a Manor hath not more usually taken up his quit-rent once a year, and thereby secured his Right Perpetuall, nor the Landlord his Farmours rent, nor the Merchant his debt, then the Lords Minister these Dues for his heavenly work, (and he hath not been wont to *require them of Courtisie*, but *take them as Due*,) or somebody else in his right, and this wall over and everywhere without delay, dispute, or denial. Which *Postulatum* was need to be not proved, but called to remembrance: And this done, proceeding to possession it self, the Great force it has in the world, and by consequent may here. is not hardly discernable from the heeded truth of these following *Positions* or *Observations*:

1. That it gives Right.
2. Was the first Natural Right.
3. Is a very Right, able to endure examination.
4. Defending it self against all comers.
5. Even against the true owner, sometimes, (*scil.* at last.)
6. Against

6. Against whomsoever at any time that hath but equall Right.
7. Against all the world still till it be evicted.
8. And enables a man to keep what he could never have gotten.

This force it has, and it seems a great force; The simple assertion was first, *It gives Right*, And it does so: for in some cases a thing is Mine, from or for no other reason, but because *I Have it*. If another Had it, it were *His*, (as now 'tis Mine,) But because I have it, it is *Mine*, and not *His*; and it is injury and wrong to deprive Me of it. (1) This Book, That Field, This Garment, or Sword, or Diamond, my Hand gives it me, I have right to it in Conscience, because I have it; and as any other thing is another mans by his plea whatsoever, so these Mine by bare Possession. Which chiefly prevails in vacuity of title: for then, *Quod nullius est, id jure naturali occupanti conceditur*, says (2) *Gaius*, That is No ones and comes in my way, *seems naturally to come home to Me*; as Beasts, that are wilde, Fish, Fowl, &c. which if I can take, no one will doubt my right to Own them. Nor skils it much (3) where: for though I might have been hindred coming into another mans Field, what yet I take there is for my self, I might have been keep out, not from my fortune, The wrong was in the intrusion, not in what I have gotten. But then I must fully have it: For (4) if I wound, ano-

(1) Tu e naturali primævo antequam essent jura civilia, id est, leges, suis statutum, ut quæcumque terram calcaveris pes tuus tua sit. Gloss. quia naturaliter, ad F. lib. 1. tit. de adquir. vel amitt. possid.

(2) F. de adquir. rerum Dominio, L. 3. Singule rerum autem hominum res multis modis sunt; quarundam enim rerum dominium nanciscimur jure naturali, &c. And of the severall such natural ways of

preparing one is by possession. Instit. lib. 2. tit. 1. sec. 11, 12. Jure autem gentium sive naturali dominia rerum acquiruntur multis modis: Imprimis per occupationem eorum que non sunt in bonis alicujus. Bracton lib. 2. cap. 1. sec. 2 & vid. Flet. lib. 3. cap. 2. sec. 1.

(3) Nec interest feras bestias & volucres, utrum quis in fundo suo capiat, an in alieno. Plautus, qui in alienum fundum ingreditur venandi aut occupandi gratia, potest a Domino si is prevideat prohiberi ne ingreßatur. Quicquid autem eorum ceperis, eorumque tuum esse intelligitur, donec tua custodia coarctetur. Cum verò tuam evaseris custodiam, & in libertatem naturalem sese receperis, tuum esse desinit, & rursus occupantis fit. Instit. Vbi Supra.

(4) Illud questum est, an fera bestia quæ ita vulnerata sit, ut capri possit, statim nostra esse intelligatur. Trebatius placuit itatem nostram esse, & eorumque nostram videri, d nec eam persequamur. Quod si deserimus eam persequi, desinere nostram esse: & rursus fieri occupantis. Itaque si per hoc tempus quo eam persequimur, alius eam ceperit eo animo, ut ipse lucrifaceret, furum videri cum nobis commississe. Plerique putaverunt non aliter eam nostram esse, quam si eam ceperimus, quia multa accidere possunt, ut eam non capiamus, quod verius est. F. de adquirendo rerum dominio. L. 3. Sect. 1. Vid. Instit. Vbi Sup. & Bracton & Flet.

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ther take, *He that possesse* must onely have the benefit of *Possession*: and so I must keep, else I have lost what I had

(1) Item ea quæ ex hostibus capimus, jure gentium statim nostra sunt: adeo quidem, ut & liberi homines inservitorem nostram deducantur: Qui tamen si evaserint nostram potestatem, & ad suos reversi fuerint, pristinum statum recipiunt. *Instit. and just 17.* Or *Bracton and Fleta have also the same.* Habet etiam locum ista species occupationis in iis quæ ab hostibus capiuntur, &c.

Item quæ ex animantibus dominio nostro subiectis nata sunt, eodem jure nostra sunt: Idem etiam in insulis in mari natis, & in similibus, & in rebus pro derelicto habitis, nisi conveniendo. &c. *Bracton ib.* And *elsewhere*: Possessio aliquando jure parit, & pro possessione præsumitur de jure, *Id. lib. 4. tract 1 cap. 2. sect. 7. fol. 160.*

(2) *Instit. de jure personarum, sect 3. servi. lib. 1 tit. 4. & F. de statu hominum, lib. 4.*

(3) Servorum appellatio ab eo fluxit, quod imperatores nostri captivos vendere, ac per hoc servare, nec occidere solent. *F. de verborum signif. l. 239.* & *vid. Instit. & Digest. in locis citatis.*

(4) See *Bracton and Fleta in the places cited before.*

with Us too in some and most cases; Nor want we instances of Right of Land so gained merely by virtue and power of occupancy. For although all were originally in the Crown, if out, derived from it, and so upon extinguishment of the derivative title, as Escheat should have naturally reverted to whence it came, yet in some cases and by some circumstances it proves not so, but a title may be (5) gainable and tenable by Entry as they call it, and a man Have and have Right to Land merely by *Possessing it.*

(5) *Counsellor Bacon gives an Instance, Where an estate is granted to one Man for the life of another, and the first dye without disposing his Right, Nor Heir, nor Executor, nor Reversioner can have it, So it is he that layes hold of it. Use of the Law, pag. 24. See the example at large.*

2. I said moreover, Possession is the first and naturall title: Nothing is more Naturally *Mine* then what I do lay hold

gor. So in the wars, (1) the spoils of an Enemies Camp are Mine, so much thereof as I can lay hold of: Those Captives à *Capiendo*, or (2) *Mancipia* è quod ab hostibus manu capiuntur, because they are touched to Property; *Servi* alio (a) (3) *servando, non à serviendo*, from being kept, not made slaves of,) are all reduced within the compass or restraint of Property, to bee disposed of as the New Owner pleases; But so long as they are kept again; for if they break out and return again to their former liberty, they are now again their Owne as before, and not His whose they were, who hath lost that whereby he had them. These things may (4) have some speciall way of ordering with us; but then generally they prevail Thus abroad, and

hold of. *Justinian* (1) taught me so, and *Thence* yet, *what we take is our Own*, as hee has from *Labeo*. *Ecce effectus possessionis*, the (2) Gloss there bids us mark it, and it is remarkable: For even beasts, we see, will rarely exclude the Possessor: They have onely the Law of Nature, they skill

no compacts or force of agreement, yet they observe (whence but from natural impression?) for a kinde of right by Having; whence though their ravin be greedily set, we shall finde they cease to pursue what they see another has got.

3. Yet more: this title is firm and solid and will endure the touch of Examination. 'Tis not a fraud or disfeisin, which are wrongs, and have their known remedies, but a very Right which the Law looks upon and approves, and more then permits, justifies and protects the possessor. If the other are once searched and found, they are lost, but this how much the more it is examined and known; is so much the more approved and justified.

4. Against all but the true owner at first, though the bottome of the claim be no better then in some regard an unjust entry. The words of the Law are such: *Hæc* (3) *that hath possession of Land though by disfeisin, hath right against all men but he that hath right.* Chancellor *Bacon* (4) addeth also, that whether he outed any one of his quiet possession, who is properly a Disfeisor, Or stepped in after a Possessors death before his heir, who is an Abator; In each of these cases whether Disfeisor or Abator possessing and dying possessed, *His heir hath gained the right to the possession of the Land against him that hath right, till he recover it by fit action at the Common Law.* And if it be not sued for within sixty years after the disfeisin or abatement committed, the Right Owner hath lost his rights by that negligence. If either of these, the Abator or Disfeisor, be excluded by a third invader, Is not now

(1) *Posseſſio appellata eſt, ut & Labeo ait, à ſe-
dibus quaſi poſſitio: quia naturaliter tenetur ab eo qui
ei inſiſtit: quam Græci κατεκλυ dicunt. Dominus
úmque rerum ex naturali poſſeſſione cepiſſe Nerva ſili-
us ait: cujuſque rei veſtigium remanere in his, qua
terra, mari, coeloque capiuntur. Nam hæc protinus eo-
rum ſunt, qui primi poſſeſſionem eorum adquiſierint, &
de adq. vel amittend. poſſeſſ. in princ.*

(2) Gloss. *Dominium. ibid.*

(3) *Doct. & Stu-
Dial. 1. ca. 9. f. 194*

(4) *Viz of the
Law, p. 25.*

this third person, a second Disseisor, his title good against those before, who were no better indeed then Usurpers? *Ans. No*: For to the two former the Possession gave, besides the present *Having*, such a *Right* that against All but the right owner it gives title to be as ground still left to recover upon again: and it shall not be excepted against such a man, He had no right, the thing was never His; For he Had, it Was, and He is to the second Disseisor an Owner and may out him, as having by his former possession, not so Good, an Equall, but a Better and Prevailing title: And this in favour of possession, which to all but the rightful Owner, gives true title, and may not be evaded or rejected. The question is put by (1) *Bracton* under this Head, *Who may grant a Writ of Assise?* (the known remedy of a possession, not an usurpation,) and upon Answer, That None save he that is possessed in his own right, no Guardian, no Fermour, no Servant, &c. Hee replies, *But whether then a Disseisor disseised?* It should seem not, for he had no title in his own right; indeed None? Yes; though not against the owner, against all else, and so is truly disseised, and of his right, and may have his remedy as of a disseisin: and this *propter commodum possessoris*, (or as *Fleta*, *propter commodum possessionis*,) and there is no exception against his wrongful title. Indeed such a one should not recover against the rightful possessor upon even terms, for he wanted ground to fight on, compared and contesting with him, and so things must remaine as they are: But when neither has true right, the possession (comparatively among themselves) shall create a right with the first to keep as his own, or recover being out, *Et Hoc propter commodum possidendi*, onely for Having. (2) *Fleta* has the same, and the (3) former again, *Cum nenter jus habet, melior est causa possidentis*: and (4) many other such things which I forbear to transcribe. All which and many such other do together so much favor & strengthen his right, who *Hath*, that if I am In any thing (onely In) and all the world against me but One Man, (*sc.* Hee in whom is the True right) yet I shall defend my self against them All, nor

(1) *Tract. de Assisa nova disseisin. cap. 7. sect. 2. fol. 165.*

(2) *Lib. 4. cap. 2. sect. 5. pa. 217.*

(3) *Bracton Tra. sup. ca. 2. sect. 8. fol. 161.*

(4) *Vol. lib. 2. ca. 22. sect. 1. fo. 52.*

can be justly outed by any, but shall for Possessions sake and Because I am in, sit fast, (or if I am thrown out, Recover,) and this by Law, which may be bottome, good, and justifiable enough for me to rest upon, because it settles all things.

5. Moreover, against that one man, the true owner too in time; for (1) if the Abator or Disseisor (so as the Disseisor hath quiet possession five years next after the disseisin,) do continue their possession and dye seised, and the Land descend to his heir, They have gained the right to the possession of the Land against him that hath right, till he recover it by fit action real at the Common Law. And if it be not sued for at the Common Law within sixty years after the disseisin, or abatement committed, the right owner hath lost his right by this negligence. (For, (2) *Currit tempus contra desides & juris sui contemptores*, as is eliewhere:) And if a bastard possesse quietly, and dye so, his Children shall hold against the lawful Children and their issue. This still in favour of possession: and (3) *Bracton* agrees thereto, that long, peaceable, and continuall possession locks the rightful Owner quite out: for there must be a time to end strife, and he has lost his time of regaining.

(1) They are the words of the most Learned Chancelour Bacon in the place before.

(2) *Flet lib. 2 ca. 60* lib. 7 p. 129.

(3) — *Longa enim possessio (sicut ius) parit ius possidendi, & tollit actionem vero domino petenti, quandoque*

nam, quandoque aliam, quandoque omnem, quia omnes actiones in mundo infra certa tempora habent limitationem, de acquirend. rerum dom. fol. 52.

6. Yet farther: Where many titles are equal The Possessours is Therefore Best; and if the Scales hang even, the Advantage of Being in shall sway the Right also to that side where is the Possession; Not onely the Having but the Right: For it must be always a better title must evict that which is, as if I have footing any where, it must be a strength whose Greater power shall out me, and take possession of my room. Hence the (4) Canonist: *In pari delicto vel causa potior est conditio possidentis*: In equality of state the possessours is the better. And the (5) Civilian: *In pari causa possessor potior haberi debet*: much to the same. And

(4) *Reg. Jur. Canon. 6.*

(5) *F. de diversis Regalis Iuris antiqui, l. 170. Dum queritur*

dedamio, & par utriusque causa sit, (one must lose,) quare non potior sit qui tenet, quam qui persequitur? de verborum obligat. l. Si servum Stichum u. Sect. Sequitur.

when.

(1) Bracton l. 2.
cap. 38. Sect. 5.
f. 22.

(2) Id lib. de
Exception. ca. 19.
Sect. 6. f. 418.
Et si uterque Ba-
stardus fuerit,
tam petens quam
tenens, & petens
Bastardiam ob-
jecerit tenenti, si
tenens replican-
do dixerit peten-
tem esse Bastar-
dum, oportet pe-
tentem se docere
legitimum; alio-
quin nihil capiat,
cum melior sit in
hoc casu conditio
possidentis, &c.
ib. Sect. 1. And
see also before the
very end of the
Book de Assisa
mort. Antecess.

Agreeable with
Flet. lib. 6. ca. 39.
Sect. 7. p. 433.

(3) Bracton l. 2.
c. 18. Sect. 1. f. 41.
Flet. lib. 2. cap. 15.
Sect. 8. p. 302.

(4) If a man sell
to two persons, who
shall enjoy? Lu-
lianus libro sep-
timo digestorum
scripsit, ut si qui-

dem ab eodem non domino emerint, potior sit cui priori res tradita est; quod si à diversis non dominis,
melior causa possidentis sit, quam petentis, quæ sententia vera est. F. de Publiciana in rem l. 9. Sive autem
Sect. Si duobus. Et cum de lucro duorum queratur, melior est conditio possidentis; de diversis reg. l. ur.
l. 168. Sect. 2. (5) Bracton fol. 162.

when with us one contended for a Wardship, and one posses-
sed; upon equal Right neither should have been outed, and
then He was well enough was in, He kept what he had. For,

(1) *Non sufficit quod petentes probent se jus habere, omnes,
vel quidam eorum, ad hoc quod auferatur possessio à tenente,
nisi sit qui probet se majus jus habere: Paritas enim juris
non aufert seysinam a tenente, propter commodum possidendi,
& privilegium possessionis.* A stronger weight must be to

fetch up the Scale when a Possession is settled any way: a
parity or equality of Right leaves the thing onely where it
was. Again, if an Action be begun onely upon pretence of

(2) Bastardy, and the Defendant put in his Recrimination;
The other is what he Accuses; This Plaintiff must both prove
his own legitimization, or else all is well again, and shall conti-
nue as it is, and which is more, is Therefore well *Because it is
is*, unless there be a greater strength of Reason to alter and
remove. For the Law still favours that which is *in Being*,
which shall not be altered *for equally good*, or unless *for clear-
ly better*; as an Army of ten thousand upon equal Advan-
tages in Nature is able to stand upon the defensive against a
far greater number, a like force is not like to remove it. Far-
ther; What must be done if a man sell his Right to two men,
or a pretender his coloured shew of Right for Right, Who
shall then obtain? The (3) Rule is given:

Rem Domino vel non Domino vendente duobus,

In jure est potior venditione prior.

The first Buyer had first Right, and shall carry it > agreeable
enough to that of (4) *Ulpian* in the Civil Law. Nay, some-
times this carries a victory where there is no fast ground to
fight on, and maintains the field stoutly, having onely this to
say, *I am there*. 'Tis in the case where he that has no Title,
sues against him that has but as much, and in possession, where
can scarce be comparison, neither having anything, and yet
the Possessor Thereby has enough to carry All. (5) *Quia
cum neuter jus habeat, melior est conditio possidentis.*

And no marvell again then, if the (1) Emperour observed so much Conrention to be for Possession, as that would sometimes winde in all the rest, and carry the whole business. These are the favours of Possession when in a double claim the measure of Right is on both sides equal; which seems to be grounded upon that repeated, and so much varied Axiome both of the Canonist and Civilian, or rather upon that reason upon which they both are founded, *In favour of Peace, to keep that in being, that is.* For if quarrelling men should be hearkened to in every motion, and but upon equal terms be heard with no disadvantage to him that begins the Fray, little would soon be left quiet among men; our nature is so peevish or weak, and many or most herein so very natural, that Contentions would multiply beyond either doubt of reason or hope of end, if there were not some publick devices and honest discouragements invented to choke and stille them at the very beginning; whence prudently he that first stirs is onely assured of disadvantage to begin upon; the uneven Ground must give him so much the worst at first, that if his Plea be *no better then his Antagonists*, it is in *no sort good*. If his *Antagonists* be but as (2) *good as his*, it shall be better. For, *In* (3) *pavitate Juris prior admittitur defensor quam pars atrox*: In equality of Right none shall be dispossessed of that he has. And (4) *Favorabiliores Rei potius quam Actores habentur*. If there must any favour be shewed, it shall be to the Accused: and if the Judges (5) cannot agree or be equally divided, He that is impeached shall be quit, though he be guilty; for if the Scales hang even, of proof and (6) probability, 'tis presumed for him that *Has* innocence: still and in all looking as it were with an *evil eye* upon those that move complaints, and in favourable supposition of *that well that is*; Hanging back with might and main from alteration upon equal strength (7) *In re communi potior est conditio prohibentis*, both must agree to stirr, or the thing stands) and One shall never draw forward so powerfully to alter and change, that which is, as another with equal strength shall hold back to stay things where they be, because *Melior est conditio possidentis*; if both be, or seem good, the Possessors title is thereby best.

¶ Et quia longè commodius est possidere, quàm petere: idcirco plerumque & ferè semper ingens exitus contentio de ip'a possessione. Commodum autem possidenti in eo est, quod etiam si ejus res non sit qui possidet; si morò actor non poterit suam esse probare, remaneat in suo loco possessor; propter quam causam, cum obsecra sine utriusque jura, contra petitor rem judicari solet: *l. i. §. 4. tit. 15. fol. 4. ver. Remaneat.*
(2) Cum pars delictum est duorum, semper oneratur petitor, & melior habetur possessoris causa, *F. de diversis reg. l. 1. §. 6.*
(3) *Fleta lib. 2. cap. 63. fol. 11. pag. 137.*
(4) *F. de diversis regulis, l. 1. §. 6.*
(5) *De re judicata, l. 38. Inter pares.*
(6) Cum sine partium iura obscura. Res facta venditum est potius quam actoris *Jur. Canon. Reg. 1. §. 6.*
(7) *Reg. Jur. Can. 364.*

best. Peevish malice is apt to cherish melancholick Dreams of black Distempers every where; but the serenity of clear and firm wisdom is always mixed with that goodness that thinks most things well. That deforms all for amiss, that (looking on with an evil eye) it sees not well. This charitably inclines to believe well of all it findes not evidently ill: whence with a conversation to change as little alteration is made as may be without apparent wrong. That must be *not so good but better and truer* which is promised, and he that is in possession of (1) wealth or innocence, unless there be greater strength to assail and remove then is to defend, let him keep fast and sure without any molestation in his present possession. But go on;

7. I said further, The Plea of Possession is against all the World everlastingly good till it be legally and orderly overturned. So said (2) one in this very Case of Tythes not long since, honestly, judiciously, truly and very prudently: nor is it but fit it should be so: for if a man might be presumed wrong in, at any time he might be cast out: if one, then another: if by one, then by another: and so no one from any one could be safe at any time, or any thing constant, settled ever; no remedy therefore but all be judged right that is, and till orderly proceeding do cast out of doors, a man be presumed justly in his own home where he is. 'Tis one thing to have a Benefice void in Law, another thing but voidable, sayes the Canonist; the murtherer is not to be hanged presently, though he deserve death, and must die, and though I am in condition and may be cast out of my house, till by order I am so I ought to be safe and fast there. Do not (3) Equity and Reason, the Law of Nature, God and Man, All favour that in being till orderly decision of judgement be given against it? said he, whom some count next to an Oracle; and *Prasumptionibus standum est, donec probetur in contrarium*; Things are to be thought well, till the contrary appear; and where any thing is under the God of order, 'tis a fair likelihood it should be there, and we are reasonably and piously to believe it so, till new light shew it clear to the contrary. But one word more, and it is, That Possession shall in sundry Cases help a man to keep what by equal strength of title he should never have been able to

(1) *In eo quod vel is qui petit, vel is a quo petitur, lucritacturus est, durior causa est petitoris. F. de diversis leg. Jur. antiqu. l. 33.*

(2) *A London Minister in his Resolution of a Doubt, presented with Sir Henry Spelman of Tythes. l. 19.*

(3) *Hooker in his Preface. Sect. 6.*

get,

get. If he were out he should never make way to get in, but being in he sits fast, and out no man shall ever be able to put him. For in many Cases (1) there lies Exception (a ward to defend) where there lay no Action, (or effectual means to assail) A man may have power to keep another out, that could never (there) himself have got in; defend that Castle he could not take, and bolt his Adversary out by help within effectually, where himself could never get in, if he were out, nor can be put out, Therefore, because he is in. The (2) Father of our Law speaks to this purpose: *Item, & est alia ratio, quod qui rem petere volueris, si cautè sibi provideris, videat primo an aliqua ratione nancisci possit possessionem: quoniam commodius est possidere, quàm petere. Multi enim sunt qui si possessionem habuerint, se defendere poterunt per exceptionem: Si autem fuerint extra, vix aut nunquam ferè recuperabunt per actionem.* And these are the benefits, priviledges, and advantages of Possession, (no marvel if before observed the reasonable object of great ambition;) for it gives Right, the most natural, of proof, against all but one, and him at last. It ways the Scale in an equality, is safe and just, till it be evicted, and keeps a man whether he could never have been advanced. Which if all it seem unreasonable on the Possessours part, as giving advantage to the rich partially and settling men by Law in that they have no right to, as like sometimes it does;

1. Sure, we say, first, the Law is never unreasonable, but the defect is on our part, who do not apprehend that Reason is: the Well is deep, and we want to draw of plenty.

2. And for the unreasonableness here, it is without cause imagined. For it may be considered, and must be granted, 1. That the Stage is open, what is or is done in the World cannot but be known. 2. Men love their own. 3. Are apt to make out for it. 4. Have means to come by it. 5. In the honestest, surest, and best ways that could yet be found of Law. 6. Whether in Possession or Action what is not found amiss, is reasonably to be judged well. Now these things presumed and known, and withall it being seen, such a one Has; how unlikely is it but that he should and ought to Have, else we should not see him Have? or if the right were in another, the Possession, which

(1) *Fremens enim est apud Iurisconsultos aliquid quem esse tutum exceptione, qui non sit ipso Iure.* Io-Calvin. Lexic. Iurisp p. 731.

(2) *Bracton. l de Action c. 12. Sect. 4, l. 113.*

Object.

Answer.

The Civill Right

he cannot but love, must bee with him? If there were no Courts, or presumed Partiall, or men negligent, or the whole frame of things composed toward injustice, to make or let things alone ill, or not well, Then might we doubt reasonably, and against the Possessour cherish vehement suspicion: but nothing being more evident then the above mentioned & to be granted assurances leading directly to the contrary, How can we but judge for what Is? and that the Law is reasonable favouring the Possessour as it does; (*Præsumptio- nibus standum est donec probetur in contrarium*, as before :) and that he hath right, for if he had not, as things are, hee should not have? I will not deny but some hard measure may be hereby meted out to sometimes, or perhaps wrong, But this in some degree may well be allowed the Sovereigne Authour of All our right: Better this then worse, (as worse would be if this were not,) and sith of two this way is the best, reasonably is it chosen though it be not in all regards so good as it might be.

This of Possession in general, and our loved Law about it, (as in every thing else, so here very amiable, and as hee said of truth, *Si oculis cerneretur humanis admirabiles exci- taret amores.*) But now some one may ask, what is this to our argument? That was of *Tythes*: How are They ad- vantaged hereby? I answer, with the Apostle, *πολυ καὶ ἑνὶ ὅτι ἅπαντες*; *Much, Every way*. Be it first resumed, that They are Possessed: It is not more known that men have Harvelt- ed, Or plowne, or sowne, or their Garners been made full and plenteous with all manner of store; but with equall certainty and evidence this advances it selfe in the face of the world, and he is scarce acquainted out of his owne Parish, nor in his own Parish in *England*, to whom this is not known by evidence certain and notorious. This then laid in to the former, I infer: What hath been said of possession, what can be more said of it, hath it not All force here? Doth it give right, right alone, full and natural right, the most na- tural, the Law looking on, approving and conienting, and shall it have no operation here? Shall the Churches case be singu- lar, & the Ministers of Jesus Christ have no benefit of common

axioms

Rom. 3. 2.

axioms, no fruit of those are to all other fruitful operations ? Shall they have no favour by that All have favour, no benefit by that All have benefit, the Having their Own in their own hands ? and shall that helps others many ways, advantage them no way ? Shall men look upon securing enriching Possession, shall wise men look upon it ? Shall the quintessence of wisdom in most revered Laws, and those diffused all abroad have consideration of it ? Nay, shall that little measure of knowledge imparted to tame Beasts, inable them to espy the good, and prompt them to observe the Law and order of it ? And shall onely in one case the poor Servant of God, that secludes himself from all the world to wait on his Lord in the Temple, nor for his own sake, nor for his Masters sake partake of the common benefit of the Sun-beams as it were, that shine cheap to all others to their comfort and benefit ? To keep him in that he has, to preserve him from injury and spoil, to secure his dear Owne, to render him but so much regard from his fellow as one brute creature gives another, which will not lightly snatch the prey ravenously out of his fellows mouth, yet more unreasonable men will ! Will they ? (and plot to undo those that dare but *mutire contra* ?) take away, or keep away I say, from their Brother, Neighbour, fellow-Christian-subject, and Gods Minister his rightfull possession ! without regret ! without mercy ! casting him out of the vineyard, and as good as slaying him ! for to strip is next to starve, and that worse then to kill ;) not dreading to act over again the mighty mans part against poor *Naboth*, who had but a little, yet he must not keep that ; He that has nine for one already, must have his Tenth also to make elbowroom for his pleasure, or content, perhaps for his Riot and Sensuality. Can this look like good, Christian, or well-pleasing in the sight of God or man ! Is any unrighteousnesse, and this not unrighteousnesse ! Is any thing unequall, and this not unequall ! Is any thing with impious rude and uncivil, and is not this of the worst sort of impiety joyned with incivility and barbarous cruelty ! Every man claims his Property, Every one owns his Own, and shall not Ones ? Must he alone be excepted ? Every one has benefit by it, comfort from it, with expectation (well enough a-

greeting) of joy in the world to come; Shall one sort onely be pent up to fast or feast himself with his spiritual apprehensions, comforting no higher then with the expectation of the world to come, denyed his own bread here in a Land flowing with milk and honey, to all other the joy of all Lands? If there be no due, I say nothing: If there be, I could say no less: *There is something of Justice due to Truth, and the seriousnessse of things sometimes calleth for sober vehemency.* The Law is every ones birth-right: The Husbandmans, the Labourers, the Tradesmans, the Beggars: *Soli ex omnibus Clerico commune jus clauditur!* as spake S. (1) *Ambrose* upon like occasion, shall they alone that wait on the King of Heaven, have no benefit by Imperial Constitutions! The tenderly regarded Church was wont, and even by judgement of the Law, to be compared to a (2) Pupil, (under age and subject to wrong) As much religious Charity or demonstration of true Christian piety to be helpful to her weakness, as to relieve a fatherless childe, wherein (3) S. *James* placeth the power of *that Religion that is Pure*: Are things so much changed? No, they remain the same: Or, are wise men's pious thoughts so much altered, their Pure Religion corrupted, themselves set upon Pelf and *Mammon*, yea, spoil and wrong not declined for conscience sake, that they dare invade anothers, Religion instructs or permits them to take from Religion, strip this Orphan-Church, withdraw from her Ministers, force from their hands, and extort and wrench their very meat out of their mouths, I mean in their rightfull dues, held back, grugged, or squeezed from them by fraud or force? Must not Gods bright honour be darkned, if his Lights goe out? Must they not goe out, if the oile be taken from the Lamp? Can it bee there put without the Levites help? and how can they attend to do it, if that which the Laws of God and man have settled upon them to live on, (in equality of strength for right with all other Tribes) be surreptitiously or violently taken or withheld from them (for He may starve me as well that gives me not my allowance of meat being appointed so to do, as he that takes it away from me,) and they have no benefit of Law, no not of that whereof all the world hath benefit, and by Law, *I may keep mine Own that*

(1) Ambros. li.
2. Epist. 12. tom.
5. pa. 98.

(2) See before p. 67.
& Briton. Ecclesia
fungitur vice mi-
noris, meliorem
potest facere
conditionem su-
am, deterio-
rem nequaquam: fol.
143. cited by
Cook Instit. 1.
fol. 431. & vid.
Bract. de acqui-
rendo rerum do-
minio: l. 2. c. 5.
sect. 5. & c. 15. l. 1.
In proximis
fanciæ propter
utilitatem eorum
benignior juris
interpretatio
facta est. Inst. l. 3.
de inutilibus st-
pulationibus. sec.
ted quod dixi-
mus.

(3) *Pure Religion
and undefiled be-
fore God, u. 10
visit the fatherless
and widow, &c.
chap. 1. ult.*

I have in Possession. Heed every syllable of which proposition, striking in with the interest in common of every One man in this Nation; and if it be a very small thing now that Possession may not be stood upon by some, but they turned out of theirs, or it be questioned whether it may be withholden, who knows how long it may be ere others — &c. But I forbear. I omit no ill, I wish nothing but good, I pray they may enjoy their Own who grudge, or quarrell, or want but leave to withhold other mens; Onely I fear that Circular Curse which hath (1) used to come about, which also I invert into a hearty prayer: Let not, O Lord, the Extortioner consume all that They have (2), Nor the stranger spoil their Labor. *Hoc avertat Deus. Mm. Nostr. Absit. Amen, Amen.*

Object. But here comes a great Objection to be answered, *How the Churches Person or Man, in the sense before, can be said to be possessed of these things, sith they are known to be in anothers, the Husbandmans possession? He plows, and sows, and looks to, and Has: Much good do it you, saith he then, with your part. sith I have nine and the Tenth,* As was jestingly put upon the Sophister, who when he had with much subtilty of Syllogisme proved two egges three, was bid take the third for his supper. *Ans.* Nay, not so neither: Here is more reality, a possession (or *quasi* possession) of these things, beyond fancy or speculation: Not of the things indeed strictly, but of the (3) Liberty and Right to take them up, and that is possessed continually, even when the things themselves are not: As a Lord is possessed of a Quit-rent seven years together, and yet he receives it but once a yeare, his right is inherent when the power is not used: Or, as a man possesses a way over such a ground, not by the Land it self, but by the leave, he may when he will, and will when he lists, and that list comes as often as there is occasion, Thus to make use of the Land for his Service. For understanding which things the better, we must have recourse to a known distinction, even in Law, or a separation or sorting out possessions into two kindes, of Rights, and Things; Corporeal, and Incorporeall. The one (Corporeal) are possessed but by grasping, or clasping the Things, as in our hands, &c. The other

(1) *For it is*
"Exposition of
Scripture, &c."
nos: a demon-
stration of Heavens
I place, or a sign or
example of it thus
to do: &c.
dura, &c.
affliction to the
Afflited, or One
for Another,
a Theist 15.
(2) *Psalm 109. 10.*

(3) *Is qui aut or ē
habet ad rem re-
cuperandam. ip-
sam rem habet e-
victem. F. de di-
vers. regulis. l.
15.*

Incor-

(1) Vid. Bract.
lib. 2. cap. 23. sect.
3. 4. & Flet. 1. 3.
cap. 15. sect. 16.

Incorporeall (the Rights) are enjoyed, even in the use, or having used, and so continually enjoyed, even when the use it self (the fruit) is not. As the Patron of an Advowson in gross, 1. Has never the Glebe, nor Church, nor Tythes, nor any thing seen: 2. Nor has (it may be) presented these 20 years past, or for these 20 years to come may not, yet still all this while he hath ever a Right to present, (if (1) ever he presented, or had right, which right is *lieger dormant* with him continually, till he draw his power into act, as he does when is occasion, reaping some fruit of that right which was though seldome used, inherent continually: Even so the occasionall Receiver of Tythes, it may be once a year, or whensoever, has still *ius ad rem*, that is, to the taking them up when they shall be, which is the fruit, Though not *ius in re*, the continuall actuall perception of them: In short he is possessed fully and clearly of a right to them all the year, but he reaps the fruit of this power onely in the fruits of Harvest. Much is said of these things both among our Lawyers and the Civilians; But this may clear the thing, how the proprietary hath continuall possession of his right in the interception of use of his power, and yet always leave and power to use it when there is occasion. And this also may prevent another doubt wil arise anon about Prescription, which is always founded in possession and more, even a continuance, and how can this be in the interruption of taking up these dues but seldome and as is occasion? Yes: This may be well enough: for *without Interruption, Ever*, there is a *perpetual right* of taking them up when they shall arise: a continuance of claim though the things arise not to be claimed.

Object.

Answer.

Reply.

But it may be replied to both, These things are corporal, visible, *qua tangi possunt*, within reach of All the senses; And how throng we them up then into that notional airy speculation of a right in the clouds; Such Things should be Possessed actually, or they are not within the Claim of Possession. For a (2) Triplication to which reply, Yes; so they may

Solut.

(1) The redouble
tion that is given
in answer to an an-

swer: a term familiar in Law. Ad replicationem vero sequitur triplicatio, & ad triplicationem quadruplicatio (one rejoyns further) ex causa, &c. Bracton de Except. cap. 1. sect. 4. fo 400. & vid. fol. 418. & fol. 242. Replicatio est, &c. & contra replicationem datur triplicatio Reo, & iterum quadruplicatio petenti. Flet. lib. 6. cap. 36. sect. 10. pa. 418.

indeed;

indeed; The *Things* may be seen, but their *Right* is invisible: as a Church may be seen, the Glebe is tangible, but the Right of Advocation thereto is, what? Ask, who ever (1) had it in his hand, or can tell who saw it, or where it is. The (2) Emperour has fully satisfied this point; Let patience bear with a little more length then ordinary in transcription, because it tends to illighten all before: *Quadam prætereas res corporales sunt, (saich he) quedam incorporales. 1. Corporales hæc sunt quasui natura tangi possunt: veluti fundus, homo, vestis, aurum, &c. 2. Incorporales autem sunt, quæ tangi non possunt: qualia sunt ea quæ in jure consistunt: sicut hereditas, ususfructus, usus, & obligationes quoquo modo contractæ. Nec ad rem pertinet quod in hereditate res corporales continentur. Nam & fructus qui ex fundo percipiuntur corporales sunt, & id quod ex aliqua obligatione nobis debetur, plerumque corporale est; veluti fundus, homo, pecunia. Nam ipsum jus hereditatis, & ipsum jus utendi fruendi, & ipsum jus obligationis incorporale est. 3. Eodem numero sunt jura prædiorum urbanorum, & rusticorum quæ etiam servitutes vocantur.* And the same is also the nature of this Right; Though the *Things* themselves admit possession as visible, tangible, yet the *Title* to them is in nubibus, a conceit, or supposition of the Law, without any sensible existence; And we may not argue from a *Thing* to a *Title*, from *Land* to an *Inheritance*; for they come under severall conceits of the minde, and must be cloathed with severall expressions, and though they are about the same thing, yet they are not The Same thing, nor admit the same words and considerations. So that it remains then, Tythes may be truly possessed, even when they are not, that is, A right to them against they are or shall be; That *quasi possessio* is enough to go along with the measure of time in even paces to be a ground of Prescription by that continuance; and though the things themselves may be seen and possessed Corporally, yet the Right cannot, nor is expected should. Be sure of this; That if the Lord of a Mannour, or that higher of an Honour, a Patron of his Advocation, or Copy or Free-holder have right or possession of any thing they have, the Corporation of Publick Sacred Mi-

(1) Quamvis Ecclesia secundum quod constituitur lignis & lapidibus, sit res corporalis, jus tamen præsentandi erit incorporale. Bra. fo 53.

(2) Instit. lib. 2. tit. 2. de rebus corporalibus & incorporalibus.

nisters.

nisters has as certainly possession present and continuall of Tythes in the severall Trustees or Persons, of or for that Corporation, which stand forth to Act for it, being a thing otherwise onely in *Nubibus* and consideration of the Law; That Right is vested in Them while they live; When they die the Law has provided them of a Chain of never failing successours to supply their mortality; Thus it *has been*, Thus it *is*, Thus it *may be* if Justice may be suffered to have its course, and innocent forms of Justice not disturbed by parcimony and improvident troublesome folly; and Thus is Religion, and with us the Rule thereof, the Bible provided for and possessed of (in its publick Ministers) sufficient, outward, visible support to the end of the world. O Christian, if thou be, Think of this one word; What it is to *Wrong the Righteous*, to *dispossess innocent poor Naboth of the inheritance of his Ancestors*, to thrust any Poor man out of his *Own*, or get or Wish any helpless just man out of his Due and lawfull Possession! *If thou be such*, think of this, O Christian!

CHAP. XXXI.



It follows, and is fely joyned to the former, In whose name this Possession is, which may bring it about that in a strict sense indeed no Man was or is or can be thought to be immediately in possession of these Rights but *God himselfe*, and that in the words and thoughts of the Law: (for, I give not mine owne, but onely as the Priest

heretofore delivered forth the minde of his Oracle:) For,

(1) *Is Possidet cujus nomine Possidetur*, says the same Oracle again, It is not so much *He that is In*, as *He in whose right he is in*, is strictly the Possessor: As in a Tutor compared with his Pupil, or a Servant with his Master, &c. And this

(1) Fleta lib 4.
cap. 2. sec. 1.
Bracton de Affi-
sa nov. diffin.
cap 7. sec. 1. fol.
165.

this then fitly advances us onward to the additional strength this Pillar of the Support of This Civil Right has by *Another's* *interesting*, That he that takes them up is never eſtated in them in his Own Right, but the true and farther uttermoſt Poſſeſſion of them is veſted and ſeated elſewhere, terminated *Higher, above in Heaven.* Men are Takers up of Gods Dues, They doe receive what (withdrawing his viſible preſence) is His Right, (who ſhould ſure be leaſt deſpoiled or defrauded,) and Perſons they are in the ſenſe before, as to *ſtand forth and aſſ for a Suppoſed Corporation,* So Having another *Perſonality to hold forth,* in being *His receivers,* (who though he be everywhere is yet to us *Inviſible,*) To take up to *His honour* what is Devoted to *His ſervice,* who is the *Sovereign Lord* believed of *All things,* JEHOVAH God Almighty.

This is much believed in the world, and has very much affirmance even in our Civil laws, nor can it (if the thing be thus) but much ſtrengthen and ſettle this pillar of property, whereupon as great ſecurity as Any muſt Needs reſt for injoyment and Continuance, that *Mens ſhall not* be put out for Gods ſake, nor from *His right* They be diſturbed, Who receive not *from or for themſelves,* but as *His Deputy Poſſeſſors and Receivers*; Vicars all by a ſubſtitution from the Higheſt, in whoſe Right taking up what they doe, they are the more bound to diſpenſe in *His ſervice* to *His honour*; And who is he will be ſo bold to turn the *Lords Steward* out of doors, if not for his own, for his Maſters ſake, or diſpoſſeſs God and Religion, ſubtract or withhold any thing from the *Eternall Majeſty*? Heaven, 'tis ſaid and believed, intereſſes it ſelf in this caſe, the Powers above have laid their *Sacred hands* upon theſe bequeſts and receipts; What is ſo ſettled by clear Human Law below, has a *bond of Religion* to tie it on faſter upon *Whoſoever* are the (1) *Uſururaries*; The ſpoil whereof muſt needs be Then not that of *Wrong* but *Worſe,* not of *Robbery* but *Sacrilege*, a *Divine Theft*, the *Robbery of Heaven*, like the *Giants offence*, and of that *Kinde the Eagle* heretofore committed for love of her young, Not ſparing to take the ſmoaking fleſh from the Altar, wherewith the Gods ſhould have been propitiated, But there hung thereto

(1) See Sir Henry Spelman of Tyber, p 139.

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a fatal Coal that set all on fire, and burnt both her nest, her self, and young ones. A fearfull consideration ! (if I should be so, for still I argue upon supposition, delivering forth the tendries of another, my Oracle must bear me out) enough to awaken the deadeſt, and ſtartle the wiſeſt, to amaze the bold-eſt, and affright all ſober, and any ways conſiderate, and adviſed men, from laying violent and profane hands upon that God had touched before, or tugging it out by ſtrength in this Caſe, leaſt they be not onely like that deplorable ſort, *Againſt whom God hath a Controverſie, Hoſea 4.4. This People v,* (Let them alone,) *as they that ſtrive with the Prieſt; but worſe, Shall the Clay exalt it ſelf againſt the Potter ? Woe be to him, Eſay 45.9. that ſtriveth with his Maker.* Into whoſe divine hands the Donations made and following Ratiſications favour, in expreſſion, intent of delivery; That what to Religion. was rather Devoted, then Given; even to Gods Great Majeſty, the Donee, Receiver, and intended Detainer, and Diſpoſer, That ſo men might not but give forth to his Will what they receive by his Deputation, being like to be thereby the better Stewards of thoſe Manifold Gifts of God which they receive upon his account, in his Name, and from his Right, and upon a ſecond conſideration ſhould be the more precise in diſpenſing onely to his honour, what for a ſecond reaſon the hand of his providence diſpenſeth unto them to have ſo diſpenſed: and yet farther the reaſon of whoſe proceedings and Juſtice may ſeem in equity to expect that they ſhould not ſpend merely upon themſelves, but uſe *Non quaſi ſuis ſed quaſi commendatis*, what they receive of his bounty, as His, to be ſo, and no otherwiſe but ſo uſed.

But to come to the ſtrength of ſome Particulars; (not dealing onely with the ſupple and pliable affections to mould and frame them, but ſtabliſhing the judgement in the thing averred or ſuppoſed;) That things devoted to Religion are not ſolely and ultimately Mans, but in a further hand; I will not urge the ſayings of Poets, and Oratours, Counſels, Schoolmen, and Fathers, though theſe offer themſelves; but the glances of Scripture may be not inconfiderable, at leaſt to prove the poſſibility and elſewhere exiſtence of the thing; to which

which purpose I awake to remembrance: first, the vow of Jacob, (1) *Quicquid dederis mihi, ejus Decimam omnino sum daturus Tibi.* Whatsoever thou shalt give out to Me, the Tenth I Will give back to Thee: which promise he makes to his God. And of Lands, Vows, Oblations, &c. 'Tis said, (2) *Every devoted thing is Holy to the Lord:* particularly (3) these Tythes, *Whither of the seed of the land, or fruit of the Trees,* 'as we would say, Corn, and Fruit) And accordingly paid in practise, not without intimation of this Consecration and appropriation; (4) They of Judah and Israel brought in, *Decimas armenti & gregis, Decimas sacras, id est, sacratas Jehovah Deo ipsorum,* as Tremellius; *Their Tythes of the flock and of the herd, sacred and devoted to Jehovah their God.* Who complained He was defrauded, even he himself, in These? (5) *Will a man rob his God?* (possibly the thing may be done, or else here in vain questioned:) *Yet you have robbed Me:* Wherein? *In these. Ye are cursed with a curse, &c.* And for the Attournment or making them over to Man to be received by him, for his good Lord and Masters behoof, (6) *Behold, I have given the Children of Levi all the Tenth in Israel,* (They were mine, but I have Given them to Them) *ἀπὸ τῶν λειτουργιῶν ὅσα αὐτοὶ λειτουργοῦσι,* for their publick work of Ministration, *For the service they serve in the Tabernacle of the Congregation.* All this is in Gods Book to prove the possibility of the thing (and abundance more not found or sought:) But now for what apprehensions Our Laws had of this thing here, which is to the point indeed, The beginning of the great Charter was remembred before; (7) *Concessimus Deo, & hac presenti Charta confirmavimus,* We have given to God for us and our heirs, that the Church shall have All her Rights and Immunities, And a part of the Church Rights were then in Tythes, and Jurisdiction to Command them: (Whereas the Liberties of the Freemen of the Realm were given to Themselves as 'twere into their own hands immediately.) Were those blinde days? Was King Edward blinde also? (8) *De omni annona decima garba Deo debita est, & ideo reddenda,* said he, The Tenth due to

(1) Gen. 28. 22.

(2) Lev. 27. 28.

(3) ib. ver. 30.

(4) 2 Chro. 31. 6.

(5) Mal. 3. 8. 9.

(6) Num. 18. 24.
and compare
ver. 23. & 26.

(7) Chap. 1.

(8) Leg. Edovar.
cap. 8.

God and so to be paid : so preached *Augustine*, and was granted by the King, his Baronage, and People. Not *Augustine* of *Hippo*, but one was more near

(1) *Nosti quia Dei sunt cuncta quæ percipis, &c.* *as the word: were altered before, p. 74. And a little after, Quid si diceret. Deus, Meus est homo quem feci, Mea est terra quam colis, Mea sunt & semina quæ s. argis. Mea animalia quæ fatigas, Mei sunt imbres & pluvie, & ventorum flamina mea sunt. Meus est Solis calor, & cum omnia Mea sunt elementa vivendi, Tu qui annus ac commodas, solam decimam merebaris. Sed quia piænos pascit omnipotens Deus, amplissimam tribuit mihi laboranti mercedem, sibi tantum decimam vendicant, nobis omnia condonavit. Ingrate fautator ac perfide, divina te voce convenio. Ecce annus jam finitus est, redde Domino placenti mercedem, &c. In a baroest. Sermon de temp. 219. Tom 10. p. 370.*

(2) *Spelm Concil p 360.*

(3) *Id. p. 377.*

(4) *Id. p. 349.*

(5) *Id. p. 517. c. 10.*

(6) *Id. p. 544.*

(7) *Id. p. 531.*

(8) 27 H. 8. c. 20.

que redditiones ritè persolvito, Let every one pay yearly to God his due Rights : and King (7) *Ethelred* before, *Nemo auferat Deo quod ad Deum pertinet, & prædecessores nostri concesserunt*, Let no man take from God what belongs to God, and which our Ancestours gave. What was in King *Edwards* Law we had but now : which how much the Common Law remember also, and the following confirmations of that Law (as many as were) involving this also : and to omit what might be gathered from our Provincials in *Lindwood*, and the Decrees at large, step at once to *Henry 8.* where (8) the Parliament complains to the King for remedy, that, Numbers of ill-disposed persons having no respect of their Duty to Almighty God, but against Right and good Conscience, did with-hold their Tythes, *Due to God and holy Church, &c.* They were then reputed and in Parliament Language so to belong : and lastly in the commonly reputed common Law, *Bract* and *Fleta* are not wanting. No one can but account, these things

us, and more to be heeded by us, though

(1) that Father spake fully enough and to this poin, to his *Africans*; but I keep my promise and home : Wiile, prudent, valiant, successfull, and exceeding pious, King *Alfred* required, (2) Thine Tything portion give thou to God : and (3) in his League with the Danes calls them, *Dei Rectitudines* : and his father before him wrote his Catholick Donation (4) at the Altar, offered it there, as to whom ? and not having to do with an Earl or Earderman, or any upon earth Man-receiver. The Councel at (5) *Enham* called them, *Jura Deo debita* ; King *Knout* in his (6) Laws, *Quot annis quisque Deo debita Jura justas*

things, and even in their account a part of the sacred Reve-

nue, and then (1) says *Fleta: Extra patrimonium sunt Res sacre. &c.* beyond mans Right or reach: neither are they to be transposed for that reason: for (2) no man has them, they are a part of Gods Inventory, says *Bracton. They* (3) and the *Glebe* are questionless as to this all of a nature: their property, use, possession, intention, devotion, application, and jurisdiction the same: and for what *Land* is given, (4) *Videtur & verum est, quod primo & principaliter fit Donatio Ecclesie, & secundario Rectoribus & personis*, says the same *Bracton*. Which if it be excepted against as thrown in with the exploded Abbey possessions, elsew here is shewed some difference. It is in Case of Remedy for recovery of Cathedral, Conventual, and Parochial Church-lands, by a Writ of *Juris utrum*, whether an Assize shall lay of the latter as of the two former? and it is (5) said, it shall not; For though those Lands were given to them *In liberam eleemosynam*, yet they were given to Persons, as well as Churches, who in that regard having leave of remedy, As Other men had, there (6) needed be no stepping aside out of the way upon no occasion; and the form of the gift may be known by the Charter; but now for him that has Right by his Parish Church, it was not so, that any thing was settled upon his person, but onely upon his Corporation, *Et que persona nihil clamare poterit nisi nomine Ecclesie sue, quia in Ecclesiis Parochialibus no fit donatio persone sed Ecclesie, secundum quod perpendi poterit per modum donationis*. This is evident, for what Land is given to a Parish Church; the reason is the same of Tythes, as devoted to beyond this World, and

(1) Lib. 3. cap. 1. Sect 3 Res vero sacre, religiose, & sancte in nullius bonis sunt. Quod enim d vim Juris est, id in nullius hominis bonis est: imò in bonis Dei hominum censura. Bracton lib. 1. cap. 12. et. 8. f. 8. vid. ff. de rerum divisione, l. 6. Sect 2. Inst. l. 2. tit. 1. Sect. nullius. Sacre res sunt quæ ritè per Pontifices Deo consecratæ sunt veluti ædes sacre, & Donata, quæ ritè ad Ministerium Dei dedicata sunt. Quæ etiam per nostram constitutionem alienari & obligari prohibuitur, excepta causa redemptionis captivorum. l. 6. Sect. seqn.

(2) Item donari non potest res quæ possideri non potest, sicut res sacra vel religiosa, vel quasi, &c. Hujusmodi res tunc ad nullo dari possunt, nec possideri, quia in nullius bonis sunt, id est, in bonis alicujus personæ singularis, sed tantum in bonis Dei vel bonis fidei. Bract lib. 3. cap. 5. Sect. 7. f. 14.

(3) A Rectory or Parsonage is a Spiritual Living, composed of Land, Tythe, and other Oblations of the People, separate or dedicated unto God in any Congregation for the service of his Church there, and for the maintenance of the Governor or Minister thereof, &c. So three or four integral parts, sc. Glebe, Tythe, &c. Spelman. de non temerand. Eccl. Sect. 1.

(4) Bracton. lib. 2. cap. 15. Sect. 4. f. 78. So Fleta. l. 3. c. 16. Sect. 13. p. 205.

(5) Bracton in tract. de Assisa utrum. ca. 2. Sect. 8. f. 2. 6.

(6) Quod alicui gratis conceditur, trahi non debeat aliis in exemplum. Reg. Juris. Can. 74.

by the Charter; but now for him that has Right by his Parish Church, it was not so, that any thing was settled upon his person, but onely upon his Corporation, *Et que persona nihil clamare poterit nisi nomine Ecclesie sue, quia in Ecclesiis Parochialibus no fit donatio persone sed Ecclesie, secundum quod perpendi poterit per modum donationis*. This is evident, for what Land is given to a Parish Church; the reason is the same of Tythes, as devoted to beyond this World, and

(1) sacred

5 (1) Sir H. Spelman of Tyther, chap 17. That things offered to God be Holy.

I must first explain what I mean by Holy, & that is, not that they are divine things, or like those of the Sanctuary, which none might touch save the appointed Priests: But like the Lands, and Possessions of the Levites mentioned in Lev. 27. v. 28. 29 that were said to be holy and separate from common use, and separate from man, that is, from the injury of Secular persons, and to be early disposed to and for the service of God, Defensum & munitionem ab injuria hominum. ff. de rerum divis. L. Sanctum, as the persons of Emperours and Kings are said to be sacred. For as the Altar sanctifieth the Offering. Matthe. 23. 19 So these things being offered to God, are by this very act of Oblation made holy, and taken so into his own tuition, as they may not be after divorced. p. 81.

(1) Aristot. Polit. l. 6. c. 8.

but the Levites were his Receivers. He was no more visible Then then Now, nor the things invisible and of a different nature, yet to his honour, yea to himself were appointed then, (and he did appoint them) sundry things to be set aside, which his Levites had and he in them. So here. As in implication of some like thing whereto believed and received here, it was spread abroad, and yet remains at the sea coasts, that those followers of Peter and the other Apostles who maintain their temporal life by the painfull labour of Fishing, bring the Tenth of their personal gains and lay it down at the publick Minister of sacred things his feet by the name (which they yet retain) of *Christs share*. Why this, but because they intend Him a part of every Draught? As if never a day or night they lay forth with any success but somewhat must be laid aside for Heaven, and of their penury some mites be continually paid in to his Treasury. How? To give them into his Own hands? This is impossible: He is in Heaven beyond the thick clouds, where we nor can offer, nor he receive any thing: But he has *Servants*, and *Service*, and *Ministry*, and *Ministers*, upon earth, to whom he hath said, *He that receiveth you receiveth me*, into what place soever ye enter Take what ye finde, for *the Labourer is Worthy of his hire*; For them therefore and their sakes, (3) in His Right these things are

(3) In as much as all the Types of Christ, as a Priest, have received their as due, & as types; and in as much as his person and office are eternal, and therefore the annexa; and in as much as he hath no where dispensed with, or denied, or refused, &c. and lastly, in as much as he hath left these as his Ambassadors, in his stead: for my parts I do not see why unto them in the Name and Right of their Adversaries, should not be due, which were manifestly due in his Types, and of which Himself hath no where in his word declared any revocation, Reynolds. on Pl. 110. p. 474, 175

issued

issued forth and brought in, and accordingly they receive name. If the world were asleep at first when the title was given and prevailed, It hath been awaked at some time since; 'Tis hard to impose on the vulgar, or plant any name or title among them that shall with success spread and grow, unless it fit in with their preconceived notions and apprehensions: It seems this did, whence they entertained it generally and retain it firmly, and by this name they yet express their own mindes of what they give, calling it *Christs share*. Upon which account of somewhat *beyond meerly Human*, and that had a *touch of Divine or toward Heavenly*, These rights became triable, and the doubts of them onely disputable and determinable in that Court, by rule and practise, where few of earthly or meer worldly things were once thought of, and whose natural and first proper essential bound of Jurisdiction was, *Spiritualia & Spiritualibus annexa*. There were inquired into things above this world, and which could not be regulated by common rules of Civil Justice, as Articles of Religion, Exercise of Discipline, Ecclesiastical Censures, and generally things being or reputed Sacred: And *Thither Also*, as being of kinde and kin, did *These things* throng in, or rather were both admitted and invited, as saying by Doing what was, and that they were not reputed meerly of humane consideration, because they were let in and there had regard and only proper tractation or trial where things Divine and most nearly belonging to God had or should have had their due inquiries. If the aim had been only to get in dues, (these Dues,) to determine of Civil property, or to keep one man alive in a Parish, All Civil Courts of Justice were open where All such things had their proper inquiries and resolutions, and the Tenth part needed not to have been separate from the Nine: But it seems somewhat farther was aimed at, and meant or implied which was the cause why these things were parted, and the face of things seems to represent that there was an apprehension and supposition that it was, because they were thought to draw near the things of God, and were, as far as any, toward *Beyond this world*, and Therefore they were sorted with a scene accordingly, and had their trial and discussion.

cussion where the things of Religion and Christianity were in-
quirable onely, *sc. in the Court-Christian.*

Farther, by onely which kinde of Supposition the crime
can be aggravated of taking them away to that height it
commonly is, and men for purloining be accounted in the
number of more then unjust, *Impious* and *Sacrilegious*. For
it seems at least unto me that it is not so much the violation
of any Command or Law humane or Divine, from earth or
above heaven if it were possible, can denominate and speci-
fie this sin, (if that Law were as plain as another Divine Com-
mand, *Thou shalt not commit Adultery, Thou shalt not
Steal*;) But something else and growing in the Nature of
the sinne below that must advance the crime so high as to
change kinde and become of Wrong and Injustice, Impiety
and Sacriledge: To rob Heaven must offer violation to Hea-
ven, and that be more then to offend in transgressing a Law
of Heaven. For the Morall Commandements above come
thence and are in force for us, and yet No one says Adultery
or Theft are Sacriledges: Sins they are, but that their full
latitude, the Divine Precept does not new specifie the nature
of the offence, These or Any. So heretofore, when *ius
divinum* undoubted had bounded every ones own, The tribes
at least if not the families were parted by sure and immediate
Commission from Heaven, yet the unjust invasion of any part
even then was not counted, I believe, more then Unjust, (1)

Wrong or Injury when any part of the second Table was bro-
ken, (whereunto yet the seal of Divine Authority had been
affixed in every part,) No more. Even so here, to raise this
aggravation, and cause this change by new specification of the
nature of this sin from Theft to Sacriledge, seems not to me
so properly to grow from any authority of any sort of power
and command above, as here below from (2) something in
the very heart and nature of the offence, which makes it (3)
ἱεροσυλία, a Sacred Spoliation, not from the Law, but from the
Thing: when either *Sacrum de Sacro*, or *Sacrum de non Sacro*,
or *non Sacrum de Sacro* is taken, still hovering Here below, and
as the (4) Lawyer speaks, through whose spectacles we are

(1) Qui rapit pec-
cuniam proximi
sui, iniquitatem
operatur: qui au-
tem pecuniam,
vel Res Ecclesie
abstulerit, Sacri-
legium facit. Cau.
17. qn 4. c. 18.

(2) Porro à sacris
fures horum vel
violatores pro-
priè sacrilegi di-
cti. Pet. Gregor.
Tholos. Synta-
gom. lib. 33 cap.
14. sect. 8.

(3) ὁ ἐδελύον-
τος τὰ ἱε-
ρά, ἱεροσυ-
λῆς. Rom. 2. 22.

(4) Zouch. descript. Iar. Eccles. par. 2. sect. 8. Pet. Gregor. 1. Tholos. ubi supra.

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like to see clearest in this case. And accordingly the (1) Civilian defined it, *Sacrilegium est furtum Rei aut pecunie Sacra ex loco, vel religiosa ex religioso*: and they are Sacrilegious, who? (2) *Qui publica Sacra compilaverunt*, that have meddled with somewhat Sacred: still relating to the Thing from the Command; And the word also imports that way; for (3) *Sublegere* is *Furari*, says *Servius*, unde & *Sacrilegus dicitur qui Sacra legit, id est, furatur*, so Another. Still dwelling below and conversant about *That Is*, Not *Who* says: as we do not read that *Ananias* and *Sapphira* had any order at all to bring, or sinned against any Prohibition in revoking, and yet (with *Achan*) they usually march, (transgressing in what had come under divine precept no way,) in the head of the Sacrilegious. We have no strict Command for a Chalice or diverse other Utenfils of the Church, nor the Church it self, yet few I believe will allow but transgressions aggravated by being conversant about these Things are worse then others, and of (4) extraordinary Guilt in this world. and they are Things. I promised not to meddle with any Theological Discourse, Nor do I here, but as it has dependance of and derivation from, yea, necessary complication with what was Civil. Our such Laws say, That Tythes are Given to God, which I say does well infer, their surreption sacriledge, as on the contrary, they that say, 'tis sacriledge to take them, give argument, they think they belong to God, Forasmuch as not so much Gods Command or Divine Right for dueness makes this sin, as something in, below, with the Act it self, and indeed Correlatively they infer or remove one another: for if a thing be bequeathed to Gods hand, (as the Law says plainly here,) it cannot but be sacriledge, *Sacra legere*, to take them (*Holy*) from him; as on the contrary if it be sacriledge to take them, They that say so must first imply and suppose they were made over and given to God.

I have in the prosecution of this point omitted what Epithites or Paraphrasing Descriptions I finde of them given abroad, where they are styled *Res Dominica*, *Dominica substantia*, *Patrimonium Christi*, *Dos sponsæ Christi*, *Dei census*, and the like, all which must needs advance them high,

Ll

and

(1) Cujacius in parat. ad legem Jul. peculatus.

(2) Tit. eod. L. 9. sect. 1.

(3) Apud Ioan. Calvin. Lexic. Iur. pa. 814.

(4) Locus factus ut idem vel furtum, vel Sacrilegium sit, & capite luendum. Claudianus. li. 48. Dig. ff. tit. 19. L. 16. sect. 4.

(1) *Cauf. 16. qu 7*
ca. 1.

(2) *Cited by M.*
Selden Hailt ca 6.
fecl. 6.

(3) *Agis Delphos*
profectus est ac
decimam Deo
obtulit. Xenoph.
ac rursum: Ho-
stium verò ita
fructus agro est,
ut duobus annis
centum talenta
& amplius Deo
apud Delphos
decimam dedica-
ret. Id vid. Bar-
ron. ad an. Chris-
ti, 57 fecl. 74.
tom. 1. col. 607.
(4) *Eccles. Polit.*
lib 5 fecl. 79 pa.
424.

and joyn them near in with better then meer worldly things: In *usum pietatis concessa*, as is properly said in the (1) Canon, Or, *Decimas Deo dari omnino non negligatur, quas Deus sibi dari constituit, quia timendum est, ut quisquis Deo debitum suum abstrahit, ne forte Deus per peccatum suum auferat ei necessaria sua*, as in the (2) Council of *Mentz*: But these are without the Circle of our Own, to which I promised to confine my self. Much less may I take scope to look abroad into the profane world, for their *Oblations*, even of *Tythes*, and to God, to whom they vowed and thought they payed. As *Agis* in *Xenophon*, and *Agésilas* in the same, who both brought their *Tythe* to *Delphos* to their god, and offered it him; which (3) *Baronius* having remembred, and many more, concludes with, *At verò non immorabor diutius in singulis exemplis recensendis: Constat quidem apud omnes ferè gentes, velut quodam jure natura exigente, decimas Numini devotas ac redditas*: upon his credit, paid allover the world, and as due to God, not to maintain a man or any sort of men, but in *signum universalis dominii*, in thankful gratitude to the Original Donour of All, of whom they did conceive to have and hold their good Lease, and in acknowledgement of the tenure they brought him back again something. Fain (as *M. Hooker* (4) gravely resolves and concludes, and with him I conclude this point also,) *would we teach our selves to believe, that for worldly goods it sufficeth honestly and frugally to use them to our own benefit, without detriment and hurt of others; or if we go a degree farther, and perhaps convert some small contemptible portion thereof to charitable use, the whole duty which herein we owe unto God is fully satisfied. But forasmuch as we cannot rightly honour God, unlesse both our souls and bodies be employed sometimes meerly in his service; Again, sith we know that Religion requireth at our hands the taking away of so great a part of the time of our lives quite and clean from our own busines, and the bestowing of the same in his; Suppose we that nothing of our wealth and substance is immediately due to God, but All our own to bestow and spend as our selves think meet? Are not our riches as well his, as the days of our lives are his?* Where-

Wherefore, unlesse with part we acknowledge his supream dominion, by whose benevolence we have the whole, how give we Honour to Whom Honour belongeth, or how hath God the things that are Gods?

Thus far that grave and judicious man; a piece from whose page does more then a little adorn Ours: And so now we have seen how Tythes have been intended to be settled on Heaven: How our Laws say, They were so: How they have been tryed accordingly, and this alone renders their Spoliation, sacriledge; Besides what else abroad to this purpose: *Sure then the world has looked upon them as Such: Sure they have been reputed at least as God's.*

It remains for application, How fast and safe they should then be from injury and spoil, How inviolably not to bee subtracted or touched, as things laid up in Heaven, as what may-not be purloined from the foot-stool of Gods Throne, (if there they have been deposited;) And Who is he dares put his hand toward that God has touched before, or lay a finger upon that he has laid his hand, and would, (to see himself deprived and wronged, or that the wrong should but redound to him, or touch toward him,) shew himself no doubt an *Angry jealous God!* Sure, This must not a little confirm humane Right when a bond of Religion (or as Religious) shall adde what strength it can to that which humane wisdom by the best contrivance of all its devices had made and settled before for immoveable; and this we find not in some scattered loose sheets, but the universall, all-ruling, all-giving Law making faith for it; after the stablishing by Civil sanction, This coming in and saying, *These things were given to God, I know it, I should know and do assure it: Take my word for it, I have best looked upon them, and never took them for any other.* We know, for natural and equitable reasons as well as Law, No one should be put out of his own: Possession bears such a sway that it secures multitudes in their *Heaven* right, nor are they touched or questioned but from most known injury: And shall not Gods Minister sit as safe and fast, and faster in that not onely the Law gives him as His, but the same Law tells him and all the world he is in possessi-

The Civill Right

on of for the God of all the world? for the King of Heaven? Ye cannot wrong me, but ye must Rob Him, defraud Religion, disturb an higher title, impoverish the Ministry, disable Gods service, starve and choak, (by diverting those warm showers of bounty had wont to cherish and feed it) the publick practise of Religion at the root, leaving onely a possibility, but never reducible into act, of glorious service, by this that *Ananias* and *Sapphira* have taken what *Others* gave, to maintain the Ministers of that service: Do we account it so hainous a thing, (as Justly we do) to remove the old Land-mark, to curtoll the set rule of Right, or to deprive the good people of the Land of their part in the Great Charter, which as but to a lower hand neither was never delivered farther then their Own Custody: (Item, *We have given so; us and our heirs to all the free-men of the Realm these Liberties following:*) And shall it not strike higher that reacheth to the injury of Heaven, touching the *Impri-mis concessimus Deo*, that the Church shall have her Rights? Reaching as it were unto another world, conveying up to Heaven, and depositing as it were at the foot-stool of his Throne the Assurance, making Him the entrusted Feoffee for others use, or rather the absolute and irrevocable Donee, and Proprietour estated and indowed to have Right or Wrong by the men of this world? I will not say the thing is so, fully; I onely propose, what the Law seems to intend; with what an eye that hath looked upon it, or under what form it hath represented it; me thinks in terrible form enough of Conscience to all that believe a Deity, to fright any from meddling that considers, (if it Should be so,) *Decima DEO debita, Dei Restituciones, Deo debita Jura, In usum pietatis concessa, & Concessimus Deo pro nobis & heredibus nostris, &c.* If this should NOT be so? Some one may say. But say I, What if it should? THESE may be but the workings of fearfull fancies? But, What, say I, if they be Reall and Solid Truths? They do but terrifie: But what if they should and ought instruct? As the (1) barefoot Friar heretofore answered the Gallant, who scoffing at his austerity, asked, Why so? This is not much, quoth the Friar, to him that thinks there is Hell.

(1) Cambrdeans
Remaines, p. 350.

Hell. But if there be no Hell replied the Gallant, what a Fool art thou then? But, if *there Be*, said the other, *Who is then the greater Fool? What if thy sinfull soul be sealed up to unbelief, and thy seared conscience will not render thee dreading the Fire till thou feel it, till thou lye down in it, till thine own experience be the first credible Preacher thou wilt believe, when thou shalt finde thyself laying down in flames, where the worm dieth not, and the fire NEVER goeth out?* Doubtless it is best to cast the Worst; most safe to forecast what May be although it may Not be; the more if it may tend to danger in the worst, and those everlasting inconveniences *and if men be not given over to a reprobate sense, past feeling*, as the Scripture speaks, lulled asleep by the deceitfulness of sin into a dead Lethargy, *the god of this world having so blinded their eyes*, that they have no regard of the next. It cannot be but these considerations must breed a pause at the least, and with all sober and advised men a deliberation and Doubt whether these things be so, or no? Whose possibilities are assured by the instances of Scripture where they were So: Which men have agreed so all abroad to deliver from the publick voice as it were of the Church and of the world: Which are left inshrined in the sacred monuments of most revered and solemn Laws, and unless most things did agree to deceive us, could not but be True. And if so, that there be Possession, yea, sacred, and in the sense given Divine Possession, both Equity and Law, Godliness and Honesty, Religion and Reason, Piety and Justice call out for Every man to have his due, (especially where a party may be more than man) and it can be no less then *Unrighteousness and Impiety both together* to dispossess and deprive of them. We are bound to love our Neighbour as our selves: How do we this, if we wrong him? If we undo him? If we give him cause of grief? Which of us could be contented to be thrust out of our own possessions or inheritances? a part, much worse from the whole? and yet much worse then that if the whole labouring Tribe should be left to uncertainty, and Churches in danger of being vacant? We should love God above All: How shew we this in wronging His Ministers, taking;

Rom. 1. 28.
Ephes. 4. 19.
1 Cor. 4. 4.

(1) 1 Corin 9.9.
 1 Timoth 5. 18.
 or, treading the
 mone: So Ioseph
 has left us that
 law interpreted,
 with much proba-
 bility. Vid. Ioseph.
 Antiq 1.4 cap.8.
 ὁ τιμωσὺς τὸν
 ἀδελφὴν. Thou
 shalt not muzzle
 the Treading Oxe.
 Deut. 25. 4. the
 place the Apostle
 allegeth, as Esai.
 42. ἀδελφὸς
 ὁ γν. Thou shalt
 trample the Moun-
 tains.

(2) Sacrum Sa-
 crove commen-
 datum qui demp-
 ferit rapseritve,
 parricida esto.
 L. 12. tabul.

(3) Θεὸς ὁ γὰρ
 κολοῦναι. So
 the Septu gins
 reads the Text,
 Exod 23. 28 in-
 terpreted by Io-
 seph of forain
 Gods: Antiq.
 lib. 4. cap. 8. &
 contra Apion. li.
 2, near the end.
 And also by Philo
 the Jew. lib. 1. de
 Monarch.

king oile from their His Lamp, and venturing to lay a cove-
 tous finger where He is said before to have laid his hand ?
 The prosperity of Religion is, or should be to every good
 man the *joy of his heart, the light of his eyes, the comfort of*
his soul, the life of his life: how further we this, when we
 take, (not onely from man, but) from that Religion we pre-
 tend to honour, depriving the labourer of his hire for work
 therein, muzzling That Oxe treading out the (1) Corn that
 he is not able to do his work, and whereas *the offering of*
the righteous maketh the Altar fat, we make it lean (by ta-
 king away the fat that others gave,) and are resolved once
 more to tempt the Providence of Heaven, whether it be a-
 wake and regard to revenge its own wrong? whether the
 Gold of *Tbolouse* shall prosper in our hands, though it were
 once spread upon the Altar? or the sacrifice will carry again
 a fatall coal, which kindled by Heaven, may not have pow-
 er to be quenched on Earth?

Will a man rob his God? Will he? His own God? Any?
 saith the Prophet: and will we be instances in ours? Dare we
 contend with Him that is Great? *are we mightier then He?*
 Are Gods and Mans rights combined both together? and will
 not this double strength hold? a double fence protect from
 violation? *Seneca's* Epistles would sure teach us more ho-
 nesty, and the Law of the (2) twelve Tables fright us into
 better Religion. *The Relation To A Deity* is me thinks
 such a charme as should not but affright any from meddling
 where it is inscribed, or entring that circle where the dim-
 mest Characters thereof do circumscribed appear: Sure he
 that put in some respect into his (3) Law, *To God As God,*
 and would have *None violated,* would least of all excuse us
 if we should profane (*Himself,*) *Our Own.*

C H A P. XXXII.

IN Whose right Man hath been *Long* possessed too: through the continuance of ages and generations: for this is no device of yesterday, like to change to morrow, but such as has already out-lived peace and war, troubles and conquests; yea, the revolutions of all seasons, of winter and summer, health and sickness, corruption and reformation; Nor from the darkeſt remoteneſs of any Chriſtian days, does ſhew of any other maintenace appeare for Gods family but this, which hath bin the ſubſiſtence of his workmen all along that have laboured in his harveſt, and bin maintained hereby, without which they could not have ſubſiſted nor have laboured. As if Providence had intended by this ſolitary inſtance to furniſh us with one very good argument for Expedience of continuance, Becauſe the world could yet give example of No other, At leaſt ſome cauſe of doubt there Might be and Reaſon to fear whether Any other would do ſo well, becauſe none at all had yet been tryed. For many things ſmile with very much content and pleaſing flattering delight upon the nimble working fancies of buſie bold undertakers, Who when they have caſt and contrived ſuch a thing *ſhould be*; give themſelves leave to be perſwaded preſently *it ſhall*, and what hath been moulded in their working fancies (commonly attended with weak Judgements) may eaſily be made out into Exiſtent Realities, for which their quick wits are ſoon able to afford them arguments enough: But when they ſhall come to reduce their ſpeculations to praſtiſe, and give life to their pregnant and very Happy conceptions (as they think) ſetting the whole frame of their new and unexperienced devices to move forward upon all thoſe neceſſary wheelles their fancies had ſoon made, and now muſt be made out to keep their Projects a going, Many a doubt ſtarts out *ex improviſo*, Many a rub is caſt in the way of their ſmootheſt

smootheſt and evenneſt moſt probable deſignes, Many an incongruity ariſes to diſturb and croſs their promiſing and moſt handſomly and univerſally complying expectations; Many a ſowre and unlooked for oppoſition to make the plot relliſh of Humane, whatſoever hath been the beſt fruit of *Mans contrivance*, accompanied as it is with *manifold Humane infirmities*: Whence ſome wiſe men have declined nothing more then Change, accounting it a good part of their beſt Wiſdome to Vary as little as may be in things of waight, yea to let things quietly and upon deliberation alone with Some inconveniencies if but Tolerably Well, not onely becauſe of the Charge and trouble, but alſo that manifold Uncertainty will always follow Change, (as we are able to make it,) taking *that Is*, though precisely and purged from all inconveniencies None of the beſt, and venturing with choice and moſt ſatisfaction of reaſonable deſire along in the trodden, though ſomewhat uneven path, becauſe There they can deſcry the feet of Sundry Paſſengers that have Uſed to goe before them. Experience is among the greateſt Securities of Hope; Duely applyed it gives as much toward Aſſurance as almoſt any thing, that What Has been ſhall Be; As on the contrary dark untrodden wayes have Wiſe mens jealousies always hanging over them, and perillous innovations been by them both ſhunned and feared: Forasmuch then as Chriſtian Publique worſhip hath (with us) had little other ſupportation then this Hitherto, and Many think No other will hold, This may affoord at leaſt a Topicall argument for Continuance; that What hath been May, becauſe of none other the world hath had any of the certainty of Experience.

¶ And this ſtep advanceth us fitly to the laſt plea of *Preſcription*, and that confirmed by what it had its firſt ſtrength from, ſuch *continuance of Time* as doth more then manifoldly double and treble that Time of *Having*, which was ſimply neceſſary to Preſcription; (as each pillar before had ſome additionall ſtrength:) Which to underſtand the better, and ground all the firmer, it may be expedient, as in them, to premiſe ſome things of the doctrine of *Preſcriptions in generall*; for this will

will be the more solid and able to endure examination, if we shall not fancy to our selves, any thing, but take that meaning thereof here, that others have both taken and given.

Mos (1) *est longa Consuetudo de moribus tantummodo tractata*, I begin then with that of *Isidore* in the Canon: & (2) *Consuetudo est ius quoddam moribus institutum, quod pro lege suscipitur cum lex deficit*: Combined, as it were, one in another, and are both in effect, *Usage strengthened into a Law*. Of which Law, if there were never a word in this world, nor *Scriptum est* had ever dropped from any learned mans pen, or publique vote to bear Umpire or decide doubts, yet if mens forwardness shall take up, and Use continue, some men goe before and others follow in any good way. *This Continuance* by degrees grows up into a *Law*, (especially in England) and what is warranted hereby is lawfull enough; future Travellers may keep that rode justifiably and without controll, because they can urge they see the print of others footsteps which have usually heretofore gone there before them. I said, especially in England; for here some peculiar influence is from Custome; Our law seems much made up of it and more then other, so far that whether it or law say the same thing is not much materiall with us as to credit or validity. *Consuetudo verò pro lege observatur, in partibus ubi fuerit pro more utentium approbata, & vicem legis obtinet*: Longavi enim temporis usus & consuetudinis non est vilis autoritas, says (3) *Bracton*: It is as strong as Law. And (4) before, *Cum autem ferè in omnibus regionibus utantur legibus & jure scripto, Sola Anglia usus est in suis finibus jure non scripto, & consuetudine. In ea quidem ex non scripto jure venit, quod usus* (5) *comprobavit*. As if some peculiar regard were given to it, here, *Vivitur exemplis*, we durst almost venture by track, and it may and must be well what others have used to doe before us. What other ground almost besides this doe we know of many things

(1) Decret. par. 1.

dist. 1. c. 4.

(2) Ca. sequ.

(3) De divisione

rerum, c. 3. sect. 2.

(4) Id. c. 2. sect. 2.

(5) It follows there:

Sed absurdum

non erit leges

Anglicanas licet

non scriptas) leges

ge appellare,

cum leges vigorem

habeat, quicquid

quid de consilio & de consensu magnarum & reipublice communi sponfione, auctoritate regis sive principis præcedente, justè fuerit definitum & approbatum. Sunt autem in Anglia consuetudines plures & diversæ secundum diversitatem locorum: Habent enim Anglii plurima ex consuetudine, quæ non habent ex lege: sicut in diversis Comitatibus, Civitatibus, Burgis & Villis, ubi semper in quocumque erit, quæ sit illius loci consuetudo, & qualiter utantur consuetudine quæ consuetudines allegant.

we see done and allowed? Ask the reason of *finer, Herriots*, (or *Heregates*, for that I take to be the right name, *somewhat belonging to an Army*) *Relieves, Widows thirds*, (in a speciall manner here) *Copyholds*, to the *eldest or youngest*, and severall rules of right yet stinting strife all in severall places; Is not the bottome of most of these, *Custom? it hath been so*? Men have used to pay, or give, or do so? and This reason enough why it should Be so. For men are with some difficulty debarred their accustomed way; Late may not be hindred, what might have been at first prevented. So that if overwise posterity shall at any time think to awake out of that dream wherein their dull and patient Ancestors have suffered themselves to be led out of the way for a long time, as their new wisdom thinks, and champing irefully upon the bit, resolve to call all to scrutiny that hath used to pass, and if it cannot give a very fair account of it self, discharge it for superfluous, Does not the answer that heretofore (1) *Agrippa* made to some Medlers, seem especially fit to be served in to their satisfaction? *Intempestivum est nunc libertatem concupiscere*, It is now too late to seek for what they might have desired; *Olim ne ea omitteretur certatum oportuit: Nam servitutis periculum facere durum est, & ne id subeatur, honesta certatio: At qui semel subactus deficit, non libertatis amans dicendus est, sed servus contumax*: They might have chosen, but now they are bound and concluded, the yoke is settled on, and must be born, (as *Peter* told *Ananias*, Thy money was at thine own dispose, but now thou hast limited thy former liberty.) And (2) *Joseph* himself, as his wont is, to the same Men, Gravely: *It is commendable indeed to fight for liberty, but this should have been done in time: Those that have been subdued, and long obeyed, to shake the yoke is rather a desperate shift, then an advised attempt for liberty*. There be many things, 'tis like might have been amended at first, and the work of true prudence have cast things in such a mould at beginning, as might have saved (or prevented) many after following and continually renewing inconveniencies: But when the lot is cast and the tables shut up, the publike hath appointed, time settled, and continuance made next to immoveable and natu-

(1) *Ioseph. de Fello Iud. lib. 2. cap. 16.*

(2) *Honestum quidem est pugnare pro libertate, sed id olim factum oportuit. At qui victi semel sunt, et longo tempore paruerunt, si jugum excutiant, faciunt quod desperatores hominum est, non quod libertatem amantium: Ioseph.*

rall, Then for every thinking man to be tampering with *avita consuetudines*, to amend all he thinks hath been long amiss, cannot but be the way to much trouble, or is not much removed from intemperate fury: Because he is very weak that *thinki not at least* he can mend somewhat in Sir *Tho. Moores* Eutopia, or *Plato's* Common-wealth, and it may be, Could, but *Some evils are better born then their remedies*. I confess my self not very Curious before in keeping my self to that strictly may come under the word of Prescription, but to that which hath the nature of the thing, to create a title by Possession and Time Ever: And I know what distinction the Civilians have between it and that ranges also under the same head, of *Usucapio*: That (1) One is restrained to land, The other to goods: One for, *Longi temporis*, the other for yet larger size; That (2) to take place onely in Italy, This also in the Provinces: But chiefly, that one gives (3) full right of positive Dominion, for recovery; But the other onely *Exceptionem contra actionem*, to protect the Possessor against an assyulant, cannot recover a disseisin: But these niceties are not to be much stood upon by us here in *England*, and the rather for that the (4) Civilians themselves stick not fast to them: We mean, as said, the Thing; that which gaineth Title by (5) Having and Using, Possession and Continuance; and these two, I suppose, as so many essential parts, doe goe alwayes to that which is Prescription. Which is then, sayes (6) *Cook*, A title taking his substance of Use and Time, allowed by the law; *Prescriptio est titulus ex usu et tempore substantiam capiens ab autoritate legis*. He critically distinguisheth again between This founded in a person, Custome in a place; A man may prescribe, a Mannour or Honour breed a Custome: (but this I insist not on neither.) and the Civill law agrees with ours: (7) *Usucapio est* (8) *adjectio domini per continuationem possessionis temporis lege definiti*. But now what time is requisite to create title, would require somewhat a large parenthesis.

(1) Joan. Calvin. Lexic. Jurid. in vocab. *Prescriptio*. pag. 732. & in vocab. *Usucapio*: pag. 959.

(2) Id. in vocab. *Prescribere*. pag. 751. *where is a paragraph, and as the author thinks, first started distinction of their difference*: Vid. etiam Cuiac. in paratit. ad Cod. de *prescriptione longi temp.*

(3) Vid. Gloss. *Quod autem prescriptione in Caus. 16. quest. 4. in Rub. & Cuiac. in the place but now.*

(4) As may be seen in Jo. Calv. pag. 732. cited before.

(5) So *Cook* on Littleton. Inst. 1. fol. 110. b.

(6) Fol. 113. (7) ff. lib. 41. tit. 3. 13. (8) *Restius fortasse, Adeptio domini: Sic enim ex Ulpiano Duaren. in loc. & Calvin. in Lexic. Jur. pa. 959.*

First, abroad : and (1) by the twelve tables one year was enough for moveables, two for immoveables : If a man had possessed *bona fide*, & *ex iusto titulo* so long. He was in for continuance. This *Justinian* altered, (or rather *Tribonian*.) for three years in the former, and ten in the later, *inter presentes*, but if the owner were absent he was allowed twenty. This was called (2) *prescriptio longi temporis*, which yet satisfied not in all : for it was needfull to bring in besides (3) *Prescriptio longissimi temporis*, which lengthened the leave to claim within thirty years, or in some cases within forty ; and here with them most things stayed.

By the feodall law (1) thirty years prescription was good, and He that had no investiture, and had been in so long and done services stood firm.

So by the (5) Canon in many things determinable hereby, though for one Church to prescribe (6) Tythes against another require forty years, and in some, (7) other Cases.

Here at home has been much variety : and we have had no fewer then three sorts of measures to limit and set out the time of possibility of Recoveries by without or beyond the bound of Which, no hope.

(1) Iure civili constitutum fuerat, ut qui bona fide ab eo, qui dominus non erat, cum crederet eum dominum esse rem emerit, vel ex donatione, aliave quavis iusta causa acceperit, is, eam rem, si mobilis erat, anno ubique uno : si immobilis, biennio tantum in Italico solo usucaperet, paterum dominum in incerto essent. Et cum hoc placitum erat putantibus antiquioribus, dominis iustice et ad inquirendas res suas prefata

tempora, nobis melior sententia felix, ne domini maturius suis rebus defraudentur, neque cito loco hoc beneficium concludatur. Et ideo Constitutionem super hoc promulgavimus, qua cautum est, ut res quidem mobiles per triennium ; immobiles vero per longi temporis possessionem, id est, inter presentes decennio, inter absentes viginti annis usucapiantur : *Instit. lib. 2. tit. 6. in princ.*

(2) Non usucapias nisi sine tibi talia quinque, Reda fides, iustus titulus, res non vitiosa, Quod res tradatur, possessio continetur : *et in Gloss. Quod autem, in Caus. 16. §. 4. in Rub.*

(3) *Vid. Caus. parat. ad Codo. lib. 7. tit. 22.*

(4) *Vid. parat. ad tit. 39. de prescriptione triginta vel quadraginta annorum.*

(5) Si quis per triginta annos rem aliquam ut feudum possederit, & servitium domino exhibuerit : quamvis de ea re non sit investitus, prescriptione tamen triginta annorum se tueri potest : *Obsequium de Orta. Feud. lib. 2. tit. 26. sect. 4.*

Et vid. Gloss. fin. ad Feud. lib. 1. tit. de usi. Medolan.

(6) *Caus. 16. qu. 4. c. 1, 2, 3, 6, 8, 9. Decretal. Gregor. lib. 2. tit. 26. cap. 3. Twenty, or twenty annes in some cases. The words see after transcribed in pag. 273. in marg.*

(7) *Tit. eod. c. 6. Ad aures nostras pervenit duas Ecclesias litigasse super decimis, quas una earum in alterius parochia annis quadraginta possedit : & infra. Tuæ fraternitati tenore presentium innotescat, quod de Iure melior est conditio possidentis ; Quia quadragenalis prescriptio omnem prorsus actionem excludit.*

(4) *As, against a Church or a Religious house, tit. eod. c. 8 & Caus. 16. qu. 4. c. 16. approving that of the Code, de Sacrosancti Eccles. Authent. Quas Actiones & Novel. 131. cap. 6.*

B. to hold Tythes, a Layman prescribes never. Quia cum Laici decimas detinere non possint, eas nulla valent prescribere ratione : Decret. lib. 2. tit. 26. cap. 7.

1. The yet standing and yet withall

(1) most ancient and natural Rule is by comparing with the (2) knowledge of present men; if within the reach whereof any thing be seen and to be said as known and remembred, the Possessour is loose, and may be removed; if otherwise, *Melior est conditio possidentis*. He that has is secured his continuance of having.

(1) For it was by the Common Law, before the Statutes, says Littleton. Sect. 170.

(2) The limitation of a Prescription generally taken is from the time that no man's memory to the contrary. Doct. & Stud. f. 19. as if that had been always. And so in the new Additions to that Book. Add. 1. f. 4. *Alse abroad*, Ductus aquæ cujus or go memoriam excederit, jure consti uti loco habetur. ff. de aqua quodlibet l. 3. Sect. 4. Ac fortè non improbabilius dici potest, non esse hanc rem in sola præsumptione positam, sed jure gentium voluntariò inductam hanc legem, ut possit o

memoriam excedens, non interrupta, nec provocatione ad arbitrium interpellata. omnino dominium transferret. Credibile est enim in id concessisse gentes, cum ad pacem communem id vel maxime interesset. Groc. de Jure Belli. l. 1. c. 4. Sect. 9.

2. But because this might flag, or prove uncertain, and is always wavering, some more certain bounds were thought fit to be enquired after, which as stakes fixed, at least at one end, might determine *huc usque* shall inquiry come, and no further; precisely laying down what might be expected, as 'twere to a year and a day. As in *Glanvils* time, the Claim must be laid in some (1) Cases, since the Kings last Voyage into *Normandy*; in (2) other, since his Coronation; in (3) Writs of Right, his Grandfather *Henry 1.* and if on this side these severall limits, nothing could be shewed to molest, &c. beyond was as good as nothing. In *Bractons* time, under *Henry 3.* the widest Writ of (4) Right was bounded by *Henry 2.* time, others narrower, according to the limitation of the (5) Statute of *Merton*. In (6) *Fletaes* time, who lived (likely) under (7) *Edward 1.* from the days of *Richard 1.* according to the (8) Statute of *Westminster 1.* cap. 38. And this it seems remained to *Littletons* time, about *Henry 6.* for (9) he mentions the same to be the *Hercules Pillar* then, beyond which no Claim could be laid to any thing.

(1) In tract de de leg. Ang. l. 13. c. 33. f. 36.

(2) l. b. eod. ca. 3. f. 36.

(3) l. 2. cap. 3. & l. 12. c. 10.

(4) Bract. de de falsis, c. 5. f. 173. & tract. de except. c. 19. Sect. 1. f. 416.

(5) 20 H. 3. c. 8.

(6) Fleta l. 4. c. 5. Sect. 13 p. 224. & l. 6. c. 6. Sect. 3. p. 401.

(7) vid. Selden. dissent. ad Flet. c. 10. Sect. 2.

(8) *Mais about* 3 Ed. 7.

(9) Sect. 170. f. 213.

(10) From Cook in his Instit. 2. in the statute of Mer. on c. 8. p. 955

3. But albeit these times of Limitation were reasonable when they were made (I make bold here to (10) borrow a little piece) yet in process of time (there being set times appointed in former Kings Reigns, from which as a Barque from the fixed Land the future went always further and further) the times of necessity grew too large whereupon many Sutes,

Troubles and Inconveniencies did arise, and therefore the makers of the Statute of 32 Henry 8. took another and more direct course (by setting stakes as it were at both ends of the stage,) which might endure for ever; and that was to impose diligence and vigilancy upon him that was to bring his Action, so that by one constant Law certain Limitations might serve, both for the time present, and for all the times to come, viz. That the Demandant should alledge Seisin in a Writ of Right not above sixty years next before the Teste of the Writ, in others thirty, in others forty, in others fifty. This yet left some difficulty, which was after explained in (1) Queen Maries time, and pieced out as to some trifling Sutes according to much (2) desire in (3) King James his time, and so do things I think remain with us at this day. Now from these severall Limitations of Prescription abroad and at home, and about them I cannot but note their general end, which was no doubt to prevent Sutes as much as might be, depending on proof remote and of dark days past, by limiting to forty, fifty, or sixty years, seldome farther, &c. All which it was also fit to note *κατὰ πλάτος*, or at large, that by seeing what has been, not in this place or that, but All Abroad, we may the better make estimate of what we shall finde in our Case, by comparing the length, (wherein is also the strength,) of This prescription, with that has been generally reputed enough, and to establish a Right elsewhere. I confesse the thing it self as to the equity of it seems not to me at first sight altogether so (4) fair and reasonable as that Thereon any thing should be settled, or There-from derived; for it seems as it were many times to settle a (5) Right upon a Wrong, a Due upon an Exclusion, (perhaps of Right) and at a venture such a one shall keep, what by Gift, Succession, Escheat, or otherwise *May* in due scanning perhaps belong to another: (Perhaps also to him that has it, But this is Uncertain, and Justice should never proceed but in a regular, constant, certain, *sure way*.) And therefore the prudent (5) glois upon the Decree scarce allows it to be according to the Laws of Equity

(1) 1 Mar. c. 5.
(2) Cook Instit.
eod p 96.

(3) 21 Jac. 16.

(4) *Not. Pra-*
scriptionem esse
odiosam. gloss.
Praesidium ad no-
vel. 9.

(5) *Quod initio*
vitiosum est non
potest tractum tem-
poris convalesce-
re ff. de diversis
leg. l. 29.

(6) *Nam de jure*
naturali praescri-
ptiones non sunt
inductae; nam de
cap. Praesidium.

jure naturali iniquum est aliquem ditari cum aliena injuria. gloss. Legis. ad Cauf. 16. qu. 4.

and (1) Nature, w^{ch} would by no means have any one (2) enriched by the spoils of another, as here it often is, always may be. But then again on the contrary part it would also be considered, That there had much need to be some (3) end of strife; The negligent is but duly punished if he will not come in in some reasonable time; He knows written in the very face of the Law his perill if he do not come in to claim his own, nor is it fit Justice should wait ever; And if Controversies should be admitted of things whose knowledge is so farre off and out of our reach, that almost all the foot-steps are worn out by the continuance of Time, Our life is so brittle, changes so frequent, Arguments from what we see not so but probable, and yet so many, and on both sides, But above all the wit of man so fertile and pregnant the quarrelling way, That still some color would be found out or other, Why that should not be, that is, and that in the place thereof, which is not, and so our lives would be spent with quarrelling, as our means with charge: Wherefore, & *Ne dominia rerum sint semper in incerto*, as was the gloss before, it was prudently because necessarily determined to have some end, wherein if there wanted somewhat of Justice, there might be amends made in freedom from perpetual trouble and all-consuming charge; some *Hercules Club* must be found out to strike the matter home in certainty one way or other, or rather some *Alexanders sword*, that what of the *Gordian knot* could not be untied, it might cut atunder, so here: when it grew tedious or rather impossible through the manifold complications of crafty Contrivances to bring the matter, whose whole stage was at a distance, to a certain end, for certain yet let some end be; and at a venture settle upon the Possessour: He *May* have Right, he has had for a long time the Thing, Possession is many points of the Law, (because every man is supposed at home, and that to be a Mans own in which he hath dwelled a long time without higher acknowledgement or any ones controll,) and this He hath had no one can remember to the contrary but ever: therefore let him Continue to (4) enjoy, and he that was so lazy as not come in some reasonable time for his Own, let him now see one have

(1) *May, it is contra naturalem equitatem. gloss. vel injuria ad ff. de negotiis gestis. l. 1.*

(2) *An old Rule of Pomponius, Inrenaturæ æquum est, nemini cum alterius detrimento & injuria fieri locupletiores. ff. de diversis reg. juris ant. qu. lib. 206. & vid. de condic. indeb. l. 14.*

(3) *Omnes actiones infra certum tempus habent limitari. Flet. li. 6. c. 16. Sect. 3. Tollit amensurationem (docis) aliquando diuturnitas temporis in perpetuum, cum omnis hæretica & omnis actio injuriarum limitata sit infra certum tempus. Grat. de A. d. doct. ca. 17. Sect. 5. f. 314.*

(4) *Prescription and any way of some justices made*

Toler, and supposes the best beginning Law can give, Hobards Reports in Slades Case, pag. 297.

it that will be more carefull of it, and perhaps do more good with it. This may not be well, yet better then what is worse, Not exactly just, but the Good of Peace compensates the Evil of Injury, and a quiet suddain loss may prove better to the loser then a gainfull eternal contestation. *Bono igitur Publico introducta est usucapio & praescriptio*: as Gaius [1] spake, This is now then for every ones good: *Ut sit aliquid litium finis*, as [2] another makes it out; for now there will be quietness what ever there be else or more. [3] Whence *Valentinian* made thankfull memory of his Predecessour *Theodosius*, as in favour of humane peace and tranquility, setting forth his Edict of this nature, which *Cassiodorus* called the great Patroness of mankind; And if it do nothing else, it keeps the Peace, and where Peace is, either ready there are most worldly commodities, or *Non invita sequentur*, they will soon follow.

But this prescription that must be thus the sovereign and enriching Peacemaker, a virtual fine, (in the rational import of that word, *quia ponit finem litibus*,) must [4] have three Conditions, which I but name. It must be, 1. Long: (how long hath been said already.) 2. Continual: that is [5] without interruption, by word or deed, by violence or gentle claim. 3. Peaceable, by the true Owners patient and dead negligence. For if he stir, the bone cannot settle to grow awry, the Winde blowing hinders the Water for a time settling into Ice by coagulation; so strength is here forbidden to grow of the Adversaries Right, by him that if he strives cannot recover his own And these three things observed give a considerable [6] Right, against all but one, was said before; Now against him: for Time though it can do nothing, yet by it are done many things, and though it work not at all, yet without

(1) ff. l. 4. tit. 3. L. 1.

(2) Fulbeck part. ult. c. 4. l. 30.

(3) Remembred by Cuiac. in paratit. ad Cod. l. 7. tit. 34.

(4) Nunc autem dicendum qualiter transferuntur (dominia) sine titulo, traditione, per usucapionem, id est per longam, continuam, & pacificam possessionem ex diuturno tempore & sine traditione, &c. Bracton de acquir. rerum dom. c. 32.

(5) Quod si per naturalem possessionem possessio interrupta fuerit, à die recuperata possessionis novitriginti anni in omnibus praescriptionibus numerabuntur. Gratian. Cauf. 16. qu. 4. c. 15.

(6) Usucapiens plenum jus incipit habere. ff. de rei vindic. l. 17. in fine. Sicut tempus est modus inducendus & tollendus obligationis, ita erit modus acquirendus possessionis. Longa enim possessio (sicut jus) parit jus possidendi & tollit actionem vero domini, &c. Bract. ubi sup.

An abator or disseisor dying seized after five years cures possession gaineth Right to his heir, that the owner shall be put to his action, and if he let it run to fury, shall never recover. Bacon. of the use and use of the Law p. 35. For Usucapio inde dicta est, quod per usum aliquid caput & auferre. Vnus enim per lapsum temporis a limitibus corporales priori domino, & transfert in alium. Calvin. Lexic. Iurid. p. 595.

it is nothing else wrought. *Tempus ex suapte natura vim nullam effectricem habet; Nihil enim fit à tempore, quanquam nihil non fit in tempore*, as (1) one spake pithily. And therefore, as it is a means of (2) dissolving, so it is also of (3) contracting obligations; Settling and unsettling, binding, loosing, doing and undoing. Indeed every thing is done by Time, and without it is done nothing that is done. The Crooked grows Straight by it, the *wrong, right; Usurpation, Justice*; the *Invader, an Owner*; And he that nought else has but what *Length of Time* can give, has (with that, and possession supposed) enough to answer all that can be said to disturb him.

festè appareat, non videretur id alio fecisse animo, quam quod rem illam in mero esse noller. Grot. de jure belli lib. 2. cap. 4. Sect. 5.

Which Sovereign, and almost unreasonable priviledge is allowed upon (4) a double consideration, as well of favour to the possessor, as hatred to the negligent of his own not-seeker: for if he be possessed upon valuable consideration, *bona fide*, and deceived but as an honest wise man might be, there is so much pity of his wrong that he is kept in in favour and for his wrongs sake: But if he were a meer *invader*, and as he entred, continue a meer Usurper, yet so much doth Reason and the Law hate him that is slothful in his own interest, that rather then he shall have any thing, wrong shall take place (*by right*) against right, and rather then Justice shall always wait upon him that neglects himself, her constant purpose of giving every one his due shall wax weary, and give him onely dismission of suit at last instead of remedy. *Currat tempus contra desidiosos, &c.* as was said, and though the Law could even wish too that He should not have it that has, yet in hatred of his sloth that should seek, He shall never be put out, nor the right owner in.

nam tamen fide per tricennium rem alienam possederit, simili gaudebit privilegio, &c. Hæ possessiones introductæ sunt favore possidentis, & odio petentis, quia lex favet his, qui bona fide, & iusto titulo, vel bona fide tantum possident: edit autem & punit circa rem suam negligentes & desidiosos. Quod si mala fide rem alienam quis possidere coepit post trienta annos adversus omnem petentem exceptione tutus erit. Grotian. ubi sup. And yet the intruding possessor is afterwards discomenanced wth say he, and by the least occasion set beside the justice or kept from recovering: & the last owner shall least and last be relieved.

(1) Grot. de Jure Belli, lib. 2. cap. 4. Sect. 1.

(2) Vid. Flet. l. 4. cap. 5. Sect. 12. & Bract. de Action. cap. 2. Sect. 13. f. 100.

(3) Vid. Flet. ca. eod. Sect. 15. Quis rem suam ab alio secerit, nec quicquam contradicit multo tempore, is nisi causa alienam suarum rerum nui-

(4) Prescriptio-
num alie sine in-
troducere odio
petentis & favo-
re possidentis, a-
liæ tantum odio
petentis. Qui
causa bona fide,
& iusto titulo
rem petentis
per decennium,
absentis vero per
vicennium tenu-
erit, perpetua ex-
ceptione tutus
erit, nisi sua
adversus alie-
rum, sed etiam adver-
sus evadentes
quibus res ipsa
obligata fuerat,
etiam adversus
dominum, and
shall regains if he be
ejected. Si autem
nullo diu, bõ-
na

The Civill Right

(1) *Dictum est*, qualiter, &c. nunc autem dicendum est qualiter acquiritur possessio rei incorporalis, sicut possens juris viz. alicuius servitutis, per patientiam, que tribuitur ad consentium & longum usum & pacificum, sine constitutione vel expressa voluntate. Patientia vero tribuitur ad consentium, & acquiritur possessio iuris per usum; ut si dominus proprietatis liberum habens suum, ex patientia permittit uti vicinum suum, praesens & sciens, in fundo suo, aliqua servitute, ubi ius utendi non habuerit, sicut in pastu pecorum, itinere, vel actu vel aqueductu vel huiusmodi per longum tempus, pacifice sine interruptione: *ibi presumes leave and ceases right*. Bracton ubi sup.

All this of visible reall things, but so as the same rules hold, *mutatis mutandis*, of Rights and Services: Whatsoever (being intractable) is possessed and (1) owned by use, a continuance of that use conveying till so much vigour and proportionable quickness to the thing it self, that it daily increaseth in strength more and more: If it were weak it grows strong, If it were not able to stand alone, it doth now, *tra-En temporis convalescere*, and a man *Hath* that he *Had* is, nor can another *Forbid*, what he might at first *have forbidden*. As if a man shall allow a way, an Aqueduct, and by like reason liberty to come once a year and take such a thing, a tree from the Forest, the tenth row when the Coppice is cut, a sheaf or a tenth sheaf out of the field when it is reaped, or the like: *Ex tali usu & patientia praesumitur de consensu & de voluntate: & ita acquiritur possessio ex tempore, ita quod taliter utens sine brevi & iudicio ejici non poterit, &c.* as we may say in the words of *Bracton*. But then there must be presence, and science, the use must not be clandestine, nor in the night, &c. and many other such things there are, *de quibus hic non est narrandi locus*; but they do not contradict or contravene these things or our aim or scope.

This I take to be the doctrine, and general nature of this accident, in part abroad, but most at home, leading to what prescription is, to our purpose: from which it cannot but be evident, That such a thing there is, The Law allows it. There is plea for it and from it; In time it bindes the hands that were at liberty, and creates a right to that was at first but a lazy permission, or courteous concession, or perhaps violent intrusion: We have seen in what time this may be done, (more then by our bare conjecture,) any limitation scarce exceeding sixty years; and that in a Writ of Right (the highest with us) the possessor need not prescribe farther to barre out any pretender. In some tender speciall cases indeed, (I should

should have said,) 100 years were allowed, as (1) in things given to charitable uses which might be claimed within the Century, (but this after shortened to (2) forty.) and in the ancient (3) endowments of the Church of Rome, and formerly no (4) prescription could run ever against *Res Fidei*, or (5) things of a Temple, or (6) Sacred or Publick, or for Lay-men, as (7) before, to take up Tythes, but where any could run, in common affairs, the Stage was but sixty years of length, or fifty, or forty; Sometimes but twenty, or ten, or two; And he that came not in within this space of time served a Prohibition upon himself, He might not though he would at any time ever after.

(1) *Ve inter divinum publicumque jus, & privata commoda compensandi creatio sit, sanctum, si quis al quam religionem habet edificatam, vel legatum, vel fidei commissum, vel donationis titulo aliquid dedit, vel vendiderit, five sacro-sanctis Ecclesiis five venabilibus personis vel pro-*

monasteriis masculorum, vel virginum, vel orphanotrophiis, vel brephotrophiis, vel gerontocomiis, nec non juriscivitatum, vel donatarum, vel venditorum, vel relictorum eis sit longeva exactio, nulla temporum soluta prescriptione coarctanda. Sed & si in redemptionem captivorum quadam pecunie, vel res relictæ, vel legitimo modo donatæ sunt; & earum exactiorem longissimam esse censuimus. Et nobis quidem cordi erat nullis temporum metis hujusmodi actiones circumcludi; sed ne videantur infinitum hanc extendere, longissimum viri hominum tempus eligimus: & non aliter eam actionem siuri concedimus nisi centum annorum curricula excesserint, tunc enim tan uno modo hujusmodi exactiões evanescere sinimus. *Cod. de Sacro sanctis. Ecclesiis, l. 23.*

(2) *Vid. in Authent. Quas actiones, there following, &c. Ve omnes prescriptiones contra Ecclesias, sint 40. annorum. Novel. 131. cap. 6.*

(3) *Vid. Novel 9. & Authent. Quas actiones, alleged b & now, & Gratian Caus. 13. quæst. 2.*

(4) *Instit. lib. 2. tit. 6. de Accep. Sect. 9.*

(5) *Unvested terras quæ à colonis vel emphyteuticis dominici juris, republicæ, vel juris Sacrorum Templorum, in qualibet provincia venditæ, vel ullo alio pacto alienatæ sunt, ab his qui perperam atque contra leges eas detinent, nulla longi temporis prescriptione officine jubenius restant: ita ut nec pretium quidem iniquis comparatoribus reposcere liceat. Dat. 5. non. Jul. Caus. 68. A. 4. & Eutropio Coss. Cæd. lib. 7 tit. Næci dominicæ vel templorum vendicatio, temporis prescriptione submovetur. L. 2. The title might never be secured, nor the purchase recovered.*

(6) *Vsucaptionem recipiunt maximè res corporales exceptis rebus sacri, sanctis, publicis, populi Romani, & Civitatum, item liberis hominibus. ff. lib. 41. tit. 3. L. 9. agreeable to Instit. 2. tit. 6. Sect. 1.*

(7) *Pa. 268. in Margine.*

Now then for application of this generall doctrine: and How can This be Then but All and throughout a firm and strong argument for that I contend for? Are these things in the Tables of our sacred Law? And Does Time so much of it self Alone, destroying one mans right, and setting up others? And shall it be allowed to do nothing alike in a case respecting on God and Religion, if the case be the same? And proved? *sc.* that for so long time the possession (whereof enough before) hath been continued and lengthened here as

(1) Vbi cadem est
ratio, ibi idē jus.
Cook Inst. 1 fol.
56 Is a maxim
in the Law of
England, that
All cases are un-
to other cases shall
be; dead after the
same Law as other
cases be Doct. &
Stud Dial. 2 c. 4.

may make out that is *reasonably called Prescription*. Doubt-
less the Law is still the Same, and that good in *one mans case*,
(it ought to be so,) that Was in *Others*, and Where (1) *the Reason* is the same, It ought to be: for *Right knows no Persons or Things*, and prescription or continuance of time should bee reasonably interpreted to doe as much *For the Church* as *Custom* or the same continuance *does and may Against it*. It remaineth therefore that this onely thing be inquired into, Whether such a Right hath been in the Church? and Time out of minde? Sixty years? or other due length or space that hath used to protect and keep safe the present possessor by exception to any intended ejection, (which if the whole doctrine before is of use by all its strength to create Right and secure continuance Here, The duly and truly pre-
scribing tenant cannot be outed:) And this is as evident as Story, Record, Books, Writing, or other Memorials of any sort that give account of past times can evidence or make good unto Us. For, Ask the oldest man living, What is his knowledge? Ask him farther, Whether he ever heard his Father say, or that his great Grandfather should tell Him that in any of theirs or the next Ages before Tenth were not in-
fluable, and *ex jure* demandable to the Church out of All Lands? Impannel a Jury of twice twelve times twenty of the ablest of that County, and the next, and put them upon the question, Whether they doe not know and believe this Custom to be and have been? Or, lastly, imitate the Con-
querour, and send for twelve men out of every Shire, *legibus patrie optime institutos*, and sworn (as He did to Them) *Ut quoad possint recto tramite nec ad dextram nec ad sini-*
stram divertentes, legum suarum sancita patefaciant, nihil pratermittentes, nil addentes, nil prevaricando mutantes; and Put to them What are their *avita Consuetudines*, and whether this be not one, *Ex omni annona decima garba Deo debita est, & ideo reddenda*, and so for the tenth Colt, Lamb, Fleece, Fish, &c? And see what they will say. Go to the Lawyer, and let him give his Councel from his Books, Reports, Statutes, Laws, or Charters, &c. Let him turn them, as upon double-feed diligence, and say, whether it be not obvi-

obvious in his Rolls, Records, Customes, Cases, Books of Entries, *Natura Brevium*, Laws, Ordinances, &c. still a supposition, and glance enough *through all Ages* to prove the same: 'Tis a question of time, let him give instance to the contrary in This or That, a former or later, Any Age or Kings Raig. Deal but within the compass of *things known*, and *Christ worshipped*, and I dare trust to his ingenuity, for an answer punctuall, home enough, and agreeable to truth. In *Hen. 8.* time, *Hen. 7.* *Rich. 3.* *Edw. 5.* and *4.* and so, (like the *obscure*,) back, back to darknes, and almost bare names of Kings and Government, and has he not still as evident mention (by reflection, and as of things that had their proper scene of a *tion* and agitation elsewhere in another room) of these things in his temporall affairs as any? I would but the whole Issue were made up into a Demurrer of this expectation for satisfaction Alone: There is so much ingenuity and presumed honesty comes along with that learned Gown, assured, that all the sons of *Phœbus* (*Quis meliore into sinxit præcordia Titan,*) or sacred Ministers of Jesus Christ would expect doubtless no better sentence of Umpirage (either for the whole or this part of their right) then what his knowledge could, his readines would, his justice must and ought, and his conscience nor wills, nor dares, nor can but give in according to his evidence. I durst rely upon whom I never tryed: Wayward men may calumniate, and wilful men mistake, and weak men suspect or revile what they do not, perhaps cannot understand; But there is with that sort of men (the sworn Servants of Justice, and, as they have been styled, (1) Apprentices of the Law) the Quintessence of sound reason & immoveable honesty, profound judgment and vowed integrity, a love of the truth and painfully acquired knowledge of what it is, that I doubt not but all just and honest men would have cause to go away from them satisfied, and rest in their determinations, as of *Lovers of Truth*, and *Oracles of Sincerity*.

Take we one for all the rest, and not to be set behinde any of the rest, who wrote purposely near half a prescription space of years since upon this argument, even most learnedly.

Put

(1) Fortesc. de
Land. lib. leg.
Angl. cap. 2.

M. Selden in his
Hist. of Tythes.

(1) Hoc unum
petens, ut non
verbum Ele-
gantiam, sed vim
verum expend-
dam putet. *Amb.
Epist. 1.*

(a) Pag. 278.

(3) Pag. 280.

(4) Pag. 281.

(5) Pag. 283.

(6) Pag. 285.

Put to him whether or no there have not been time enough to make a prescription, and a prescription, and twice double as much more since Tythes were settled! (there may be error in my form of expression, but take the thing (1) meant,) and if he doe not grant enough to this purpose, and More, let mee have said Nothing. He more then pretends to sift things to the utmost, and with Curious Diligence and watchfull industry to dig down to the root of the ancient constitution of things, and to give the face of them as they have been from the beginning without any *fucus* or deceitfull gloss; and though he rove and fluctuate as long as any, yet he staves soon enough to have somewhat to spare, and yet prescribe over and over, and over. From his eighth Chapter of Laws, little can be had, but *de Jure*, of the right, which has not alwayes taken place in action; (for good Laws have not alwayes had the good hap to convey so much felicity to the world as they might, by being thoroughly and fully Obeyed;) but in the following he comes home. Chap. 10. He (2) acknowledges some payment under the Saxons by *K. Knouts letter yet extant*, or if not, punishment: Many Churches under the Conqueror are (3) marked with, *Ibi decime*, in that most authentique memoriall of our Nation, or perhaps this part of the world, the book of *Domus-Dei*, as in *Sussex, Hampshire, about Basingstoke, &c.* though this neither generall, nor common then. Other (4) evidences of dueness and payment are *under Hen. 1 & Hen. 2. and to them*, And now they began to settle: A parochial Right is (5) acknowledged and supposed by *Alex. 3. & Hadr. 4.* in their Epistles hither treating of them (they lived about the beginning of *Hen. 2.*) and it were somewhat hard to disbelieve in matter of fact, such and so solemn asseverations and depositions. But about *Edm. 1.* a parochial right is granted by himself, evident from the *Stat. of Circumspecte agatis*, and the writ of Right of advowson, of that date, where the *Esplees* are chiefly laid in Tythes: (6) And by the practise of the Kingdom it became clear law (as it remains also at this day, he says) that Regularly, if no other title or discharge, to be specially pleaded or shewed in the allegation of the defendant might appear

pear, every Parson had a common right to the Tythes of all annuall increase (prediall and mixt) accruing within the limits of his parish, without shewing other title to them in his Libell. After, giving other things, as of Cornwall from Chaucer, &c. He (1) concludes plainly the received and acknowledged Parochiall right in the practise of those times, which bath to this day continued: Neither is it necessary to adde more for the uniform continuance of it. Save where a Statute hath discharged, or a *Modus decimanti*, (which being Discharges, doe clearly presuppose and imply operation:) And this (being a Lawyer, he says) is Regularly clear Law. Some curiosities there follow, and judicious, usefull, needfull disquisitions, but so as nothing impeaches a full and universall Parochiall Right settled nine half hundred years agoe, even by his concession: And he hath been generally taken to be no great favouring friend to what more then needs he must grant in the Churches behalf, though in this particular I never held him injurious or undeserving: With his grant taken to be most sparing, he howsoever grants this, and this to our purpose Enough. He avers moreover Chap. 11. that (2) after Innoc. 3. time, all lands paid according to the Canons; and therefore no other title was made by the Archdeacon of Lewes to the Tythes of Barrington then in demand, then that the Land lay *infra limites Parochie sue de Barentin*. & Chap. 14. giving the history of their Jurisdiction tripartitely, into 1. that was before the Norman. 2. to Hen. 2. And 3. since: he has enough to the same purpose, the minde whereof having been given before, needs not to be here repeated again. And these things at home are agreeable to what was abroad, as cut out by the same rule: for as times then were, the Canon fate over all, which how it discharged it self, was shewed (3) before, Chap. 7. for Parochiall payment by the obeyed Decretals. (4) *Quia perceptio decimarum ad parochiales Ecclesias de jure communi pertinet*, as the reason is given in case of new-broke grounds: and the action accordingly was, *jure communi fundata intentio*, that is, by common right Tythes prediall and mixt were due to the Parish Rectour, if they were not by some speciall title enjoyed by some other Church, or discharged.

(1) Page 183.

(2) Page 362.

(3) Page 167.

(4) Cap. cum con-
tingat. tit. de
decimis Decret.
Gregor. 1. 3.

discharged by Canonick exemption: sect. 1. for they were not so much *given or granted* by the Owners as then supposed, or exacted or expected of or from them by vertue of any act of theirs, as to concession (of the right at first) or after delivery, As they had been *Reserved* by God at first, at the grant of all, *in signum universalis dominii, quasi quodam titulo speciali sibi Domino decimas reservante*, as the Law speaks, Never making the right out of himself that it might return: As a load of Hay, a Mine of Lead or other Mettall belonging to the Lord, is not so much a due issuable out of that land he hath let to his Tenant; as a reservation to himself at first when the Land was let, and he parted with the fruit of the ground; or as if the same Lord cuts his wood or timber, and carries it away from his tenants land, His tenant *Pays it not*, but *gives way to the taking* of that was always excepted and reserved; Or as no Mannour or Parish ever laid out any Kings high-way, but the King alwayes kept it for his other subjects out of the grant from himself: So, I say, God reserved (the times seemed to take things so,) the tenth as his part never parted with, and as his Own (some-what like a quitrent) it might be seized on *jure communi* without any order or Act of man, by vertue of primary exception or reservation. And according to these things, *the Rector in his libell, upon the allowed Actio Confessoria*, needed propose no more then that the demanded increase arose within his parish, the rest would follow: Which action, if Durand disallowed, grounded upon common right supposed, and approved rather of a *Condictio ex canone*, by some positive male Law, (not by generall right but Statute-Canon-Law, or agreed on Constitution) this is all one to my purpose, and for an allowed granted right in those days, which is all I seek for. Of what is behither, (trusting to any that pretends to know,) I need say nothing.

Page 151.

All this from one man, yet living, and worthily of fame enough for learning, not confined by our own seas, nor scarce Christendome, Neither can he but know, and I beleave, will be ready to averr many times more in this case; that if homage were paid to the earthly Lord, rents or services to the publique

publique, or any thing to any man, this, *signum universalis dominii*, was still allowed to Religion, (of more publique and nearer, inward concernment then any thing else) even to Gods house (who is supreme Lord of All) and his publique service; neither may his Ministers but prescribe long enough for it, as due, under the notion of equivalent to what was Levi's under the law, Behold I have given them the tenth in Israel (*עשירית*) for their lot, for their service which they perform in the tabernacle of the congregation.

Numb. 18. 21.

But now steps forth Doctor *Tildesley*: whom this large extent satisfies not, and therefore he undertakes the higher dark times of much further, and would not but that universall right and possession of these dues has been here Co-zvall with the Christian law, and of the same date for beginning as Baptisme and the ten Commandements: He endeavours to reply to the exception, and answer the plea for the broken payment till about *Hen. 2.* As from the *secundum Antiquam legem debemus*, in K. Knowles Epistle, & *sicut predecessores nostri concesserunt*, an ancient grant Then; from the grave testimony of *Austine* our first preachers time, inserted into K. Edwards so famous law; from a likely fair interpretation of those scant returns of Tythes in * *Domus Dei* Book, that it might be but according to the opinion of the Inquisitors prevailing (as to the affirmative or negative) in the question of Expediency or Duty, Whether it were fit or meant they should be returned, &c? But I examine not the validity of eithers arguments or answers, and as little minde the seen possibility of more strength on one part, or reply on the other: let their arguments fight (their mindes being in Charity;) which ever prevail, I have in the mean time gained a certain doubtfulness of those times under contention, and as much certainty of enough beside since: on This side over and over sufficient for prescription; Beyond, that which May yet afford more store, and this from those were able and are famous for their purposed disquisitions.

Now after this abundance together, it may be no doubt superfluous to look abroad for more. What is within the reach of common observation could hardly escape their views,

O o

especially

*Animadversions
on Mr. Seldens
Hist. of Tythes.*

* I have retained this word all along in difference from the usual representation thereof, As well because it seems most reasonable giving something of the bulk not usually heeded, sc. that it was kept in the Church; As also because I had information from the most Reverend and Learned L. Primate of Ireland, that it is the same he hath seen in many ancient Manuscripts. Afterwards I found the same also in the Latin preface to the third book of the L. Cooks Reports. The coincidence of Both which to mine own conjecture before, did not a little erect and flabish my wavering and doubting confidence.

especially His, who had examined that and more: What might be had from history, pleas, writs, statutes, and other information of best but common credit, would be but to light a candle before His Sun, or as the gleanings of a little after full heaps, and therefore may well here be spared: In short, The clear evidence of Things abroad is such, and the light of Truth concerning them so common beating in every ones eyes, that no one that is fit to speak, but must have knowledge enough to say, that for Centuries upon Centuries, ages and generations, and the repeated revolutions of many hundred years, to create prescription by continuance of paying and receiving, There hath been time enough, and enough, and enough and spare; and if twice five times sufficient to raise it in another case may here serve, (set aside the otherwise sufficient pleas of Donation and Possession) none of this will be wanting with either greatest assurance or faire probability.

It is said there could be none without possession (whereon 'tis founded,) and every one knows where the dues are kept all the year; This was prevented before: for both a Possession, and through continuance of time is for that Right is made use of but once a year, or when there is occasion: Let the truth represented in a few more lines of Master Selden be the Coronis of this part. He observes, [1] that out of any continuance alone of voluntary payment a kinde of Parochial right was then created, (speaking of about the ninth Century) though a voluntary consecration might do the same; and [2] afterwards, as this was the cause of Right to a Church whereto they had been so conveyed; so, Continuall Payment of many years did so settle the perpetuall Right of the Tythes of any Family then, that whither soever it transplanted it self, it must still send whither it had used; as if this continuance had for ever so bound it, that it might not pay them otherwise. This then; and it was about seven or eight hundred years ago; How much more strength then must an usage that has its force and being from time, and so according to nature, should, (as it does) *tractu temporis convalescere*; get vigour in its age, and be more fat and well liking? How much more strength, I say, must this use have Now, that how much

(1) Chap. 6.
Sect. 2. p. 71.

(2) Pa. 78.

much the older it is, is still always so much the stronger? And if in some Countries there may be a prescription, *De non decimando*, totally, and with us it usually prevails, for a *Modus decimandi*, which is against the Church, compared in matter of Right or Wrong to an Orphan before, How much more reason [1] is there that the Church, *The Pillar and Ground of Truth*, should prescribe for herself, then others against it? that that prevail which tends visibly and likely to the support of the Gospel, then what may prove the ruine and suppressing of it? whereby the service of God may be upheld, then whereby it may cease? Shall Time be of force to say, A Right shall Not be paid, and shall it not settle more firmly, that A Right shall? It must *not*, Rather then *it must*? In other things prescription is generally a good Plea, for Rights and things, and so Doubtless it is in This.

(1) Meritò summa habetur Ratio, quæ pro Regione facit. Hobards Reports in Slade's Case, pag. 295.

C H A P. XXXIII.



Amque opus exegi, and hope I have not failed in either part of my undertaking, that if either Title of three, and All good be Good, if either string of three will hold, and all usually strong enough, I have not fallen short of the proof of a Civil Right, and that by that Law by which here All things are possessed. *Is that any ones is*

Given him? We have shewed plainly this Donation. Can this gift be confirmed by confirmation? This hath been offered and largely diffused, all abroad abundantly. Is that I have, Mine? Sure, 'tis naturally, and none shall deprive me without wrong for Possessions sake. Now where is the Possession Here the World sees. May this Right founded in God, in Heaven Originally, on Man but derivatively, and by consequent substitution, fright boldest men from laying on their hands, and

The Civill Right

scambling with their Maker? What even the Law hath said, in this behalf hath been heard and may be remembred. *Ought I still have, what I Have had?* I challenge a liberty, a way, a right, a power to present, meerly because I have had, and so used: And *this is not here Wanting for Ages and Generations.* The result of all questionless, A CIVIL TITLE, firmly: and by these three distinct ways, by which men Generally injoy with us, and they have enough in Any, by All meeting is here a *Conspiration* of at least a treble sufficiency. Bless we God, who hath not left the support of his Gospel Here to the Good will of Men, and uncertain, tottering, voluntary Contributions, but as was said at beginning, hath given habitation to this truth (with us in *England*) Firm and Stable, and by the helping seconding acts of favouring State raised and established (as to the outward frame and support thereof) his Temple on the Mount of the same materials and under equal shelter of temporal strength and firmness, with the lower buildings of the valley; The Church is as strong, stands as fast as the mannour house, and even as much *Lower Law* for the Civil Temporal Right of these Dues, as any other mens Possessions or Inheritances do lay claim to for their sufficient supportation. *This is the Lords doing and wonderfull in our eys,* and so let it be also gracious, and the occasion of much thankfulness with his People: Looked upon as no other then a Work of his Very favourable providence for the safe and long Continuance of his own honour, and one of those comforts that may be among the Greatest to those that love the Lord *Iesus Christ* in sincerity; A means of firm establishment of the Gospels Ministry, and to hold out that blessed light of the *Christians Law* to us which may be a Lamp to our feet, and a Lantern to our paths, to guide us into the ways of peace, in exclusion of *Saturn, Jupiter, Mahomet, Frea, Thor, Woden,* or whosoever shall go about to recover or obtain a place of honour in our Temples, now dedicated to the honour of the most high God, and his Son *Iesus Christ*, with the Holy Ghost, to whom be all honour and glory in Them and through the World for ever and ever. And all these things made good too by no other then those have been reputed most

most proper strengths, The Laws of the Land, No other Language almost used, no other Books, or but rarely, cited, Among that world of Volumes that are of other things, and some on this subject, in another way, yet none chosen, or stuck to, but these & the most of them such, and so claisical and authoritative, that they make the Judgment even of the very Judges. I desire may here not unseasonably be awaked to present remembrance and due observation which was laid down before, but had There so much amplification, because it was to have here its present use and operation, and it is, that *This Law* is here below in this World, *The onely Umpire of all things, the Rule of Right, the Judge of Own, the Stinter of Strifes,* and the only *Didoes Thong* that makes out the Line by which the Limit is drawn, that fences Severals from the Common and among themselves, the onely Donor and Continuer, Preserver, Sustainer and Establissher of Every mans Due and Own, by which he hath to him e'lf What he hath, and No one else hath any thing to do with His Right or Inheritance: that gives the Master more then the Servant, the Gentleman more then his Tenant, the Nobleman more than his Fermour, or the rich and wealthy Merchant then his neighbour Mechanick; intitles him to his Land (or Rent) fences in his Inclosure, pales his park, makes a Thief that enters, and takes, and carries away, and inables him to ask, and have, and sue, and obtain, and recover against the most stubborn and unconscionable injustice, Whereby he is so far as he is, Lord and Master of All things. The Law, I say, The Law it self doth this Alone, apportioning thus to every one certainly and justly, to every fellow-Commoner His Own (in how much disproportion of Quantity soever, with the same Equality of Justice,) to one man Delicates, to Another but bread; to One Silks, to Another Frize; to him Robes, to the other scarce Rags: All this doth one and the self same law ministring to each as it listeth, whether a Mite or a Talent, a Garden or a Field, a Palace or a Cotage: And if *Then this Law should fail*, this Rule by any device be Made to warp, and this Strong Spring prove now too weak (in its full force by all Authority) to bring in known dues to *Some*, (who have the same claim with All,) who

assures that not to *Others also*, who can pretend to expect by no further or stronger? If this Judge should not be able to make good his sentence, If this bountifull hand should wither, and prove short to reach out allotted proportions to Whomsoever under equall reason of Right now, Who distinguishes the Sinews, or can warrant their Office long to quicken and actuate those fingers must reach to the wealthy *Their plenty and abundance*? Or not rather doubt their weakness or strength, quickness or deadness, life and vigour, or lost power and infirmity may have together and to All (as proceeding from the same Cause of hveliness or obstruction) the same Uniformity? This is the *Basis* whereon all is settled, the Rock whereon all is placed, the great Bottom whereon all is imbarqued, that in *England* we call Goods and kept a floating? If any should think himselfe so cunning with his malice (prompted on by his Covetousness, for it can be nothing else,) that He thinks he can sink a part, boring a hole at that end where his neighbours Goods are laid up, (the servants of publick holy work their wealth and sustenance is treasured: (without further regard to the Community within,) Let him take heed ere long he hear Not the lowd and shrill Complaints (with fearfull Out-cries) of all his fellow perishing Merchants, who are preserved in and by the same, and whose property and safety must all by Consequent be in danger to be lost or gained, sink or swim Together, to satisfie the greedy desires of those that come plainly enough within the compass of [1] St. James his Character, *Ye covet and quarrell, and ask and yet ye have not because ye would consume it on your lusts.* And let great Possessours Chiefly look to themselves, for ——— &c. ——— I was going on to due and nearer application, but the figure *Aposiopesis* lays my hand upon my lip, and forbids to speak meaning well, what may be ill interpreted, and therefore prudently and silently let this inference be left to the working of every ones own Christian and reasonable thoughts. Onely this I cannot but add, That there are seen great disproportions in the World, and some have notable advantage thereby, *The Ground of -ll which is the Law*: There are very great heaps, enjoyed with security, and

and none dares now touch the property of the rich and wealthy in a farthing; If this be touched and removed or violated, the bound is going that keeps All from primitive Community, *And Therefore* they should think much hereon who Have much to lose; They should love to keep the Fence whole who would not have All Common, & the boldness must be extraordinary of those other who in private condition Dare venture to tamper with the *Foundation of all Distances*, meddling with that in Politicks does as much as the grace of God in Religion making *one Man to differ from another in what ever he does differ: For what hast thou thou hast not received hereby? and that gives us all things plentifully and richly, solely & only to enjoy.*

1 Cor. 4. 7.
1 Tim. 6. 17.

But now some one May say, These are but Logical Arguments, humane Reasonings, fallible and liable to Mistake; Whereunto I answer as readily, assuredly Even so, and there is no doubt of it: None so far out of the way as he that thinks he cannot err, and incurably too, for as much as this perswasion in his minde is as bad as poyson in his soul, hindring all possibility of healing his error. If then replied what farther probability, It is not so here, and This is right? Have *Others* thought the same? Hath any thing been *done* accordingly? How have the fruit of such perswasions or Actions been exhibited *in view and in things existent*? I answer, Well enough: And this leads inquiry into two things yet behinde fitly, and to this place reserved, and they are, 1. What the Lawyers have given in as their Opinion upon the former or like Grounds. 2. And what has been Done: What the one have thought, and has been the fruit of the other seen in the World.

And first, *Ask the learned in their profession*: It uses to be so, and prudence thinks it has had especiall work in such obeyed directions. To the Physitian in doubt of a disease; To the Artificer in a point of skill; To the Divine in a Case of Conscience; To the Husbandman or Artist in that their callings or conversations fit them to direct about; *Every one of these is wise in his work*, as the wise man says, and we use *solely on the Practised and Experienced*. Go then to the Student, Ask the Counsellor, Move the Judge, Apply to a whole Jury of Judges, or the Corporation of Learned Men, dispersed through the Land, There is never a one will set his hand.

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hand or his thought to the Contrary, or deny it to This, *That Tythes are as due to their due Receivers as any thing else to whomsoever it is due*: He cannot go against his own light, He must know This, and he ought and will subscribe and do accordingly. 'Twere strange to finde one of a Kinde singular from all the rest: He were a Monster of his profession that had the protuberation of a strange opinion *excessive and swelling* out of his bosome, different from all other of his sort: And as such they would look upon him at *Westminster*, that should peep out into the world with this new discovery, that *Tythes are any longer Alms*, or a *Voluntary Benevolence* for the support of *Christian truth*, not *Duty* and a *Due* by strict retributive Justice. Have they not counselled? Have they not practised? Have they not judged? Do they not Judge, and still commit sentence to execution accordingly? And manage the whole series of their most honourable studies, and employments Still as upon such a Supposition? Unwilling men have not *Given*, but *Paid*: Could they ever relieve them? They have complained, *Their goods upon this pretence have been taken from them*: Where was their remedy? Their *Neighbour Bench* had *Ordered*, *Appointed*, *Given*, *It should be so*: Whence any Comfort! Nay, They, the secular Courts themselves have assisted. For if the Consistory appointed, and the convicted denied to pay, The sentence of Excommunication was *Orderly* and *Leisurely* but Certainly backed with the Writ *De Excommunicato Capiendo*, to take him that refused as a *Rebellious Son* of the Church into safe Custody of the State, as contumacious and refractory to allowed orders, and No relief, but still and more assistance and farther prosecution by whatsoever *Ploiden* and *Littleton* could do, that one sword might help another. Nay, themselves have interposed (some say, Too far; the Statute never meant it) at the first instance, and drave on the Statute of treble damages for Justice to Execution in their Court: And were they not Just even when they were, Judging as the King *Ahasuerus* desired the Queen should be, *Vashti* according to Law? *Esth.* 1. 15.

But to instance in some particulars. Of which those that offer themselves are too many, therefore I content to take up
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my self with a few: Beginning with that right worshipfull and learned Benefactor even to the Learning of an University, the most deserving of Religion, Vertue, Learning, and all Goodness, Sir *Henry Spelman*. He was not indeed a Lawyer; but More: Himself bewails the mis-guiding of his tender years (1) too soon out of the direct way to graduated and professing in that most excellent knowledge; But he that shall heed the demonstration he gives the world of his Sufficiency in those Noble Studies by his Glossary and sundry other exact pieces extant, will be forced to confess him above even measure for a Professour, and not unworthy to teach some Masters; As having digged down to the foundation of our Fundamentals, and not unworthy to sit in the highest Chair of the Learned. Now he tells us in one piece, (as I remember, for I have not the Book by me,) that although Tythes and other Rights of the Clergy had not been primarily due unto God, by the (immediate) rule of his Word, yet Are they Now His, and separate from us by the voluntary gift and dedication of our ancient Kings and Predecessours: and who shall violate the will of the dead! whose impiety shall dare alter, change, invert, divert the streams of their pious bounty, and heavenly inspired charity, out of those channels their wills set them in, to move toward and end in the advancement of Gods glory! If it be but a Mans Testament, saith Saint *Paul*, who disannulleth or addeth thereto, being once confirmed? and shall not religious indowments be yet more safe, and from violation, being Given Legacies, and having all possible humane confirmation! And in a Treatise published since his death, he is yet more express; 'Tis fully and solely of the Right of Tythes, and (taking the subject at large) He begins, *That God will have a part not onely of our Time, but Goods: That Christ released not Levi's part in them: That there is something in nature for That duenesse and proportion: That they are due by the Ecclesiastical Laws of Conncels, by the imprinted Laws of Nature, by the Written Laws of God, by the received Ordinances of Nations, and lastly, screwing it up to the equall height of our proposition to a syllable, That they are due*

(1) In preface ad
Gl. Mart. pa. 1. and
in his Treatise of
Tythes, pa. 161.

Gal. 3. 15.

Chap. 27. p. 111
&c.

(with us) *by the Law of our Land.* By what Law? the very Secular, Temporal, All-ruling, All-giving, which settles all men in their possessions and inheritances; and he alledges for it divers of thoe principles which before (as not borrowing of him) we alledged to this purpose: (whence also we hope We have not been mistaken, because we finde his vote consenting and strengthning ours.) As *K. Edwards Law*, *K. Ethelstanes Law*, *K. Edmonds Law*, *K. Edgar*, *Knout*, and *the Confessor*, beside the Conquerours:

Hec tot (ancius per plurima sacula leges

Hauerit una dies! hora una! & perfidus error!

as he exclaims: Shall one mans days change all so many! and the fruit of best humane wisdom so ripened by time, and grown (as an Oak) by leisurely degrees to greatest Maturity of strength be pulled down by sudden revocation! If the things were lawfully conferred, (as none can doubt but they were so, lawfully,) Then let us consider, (says he) how fearful a thing it is to pull them from God! to rend them from the Church! to violate the dedications of our Fathers! the Oaths of our Ancestors! the Decrees of so many Parliaments! and finally, to throw our selves into those horrible curses that the whole Kingdome hath contracted with God (as *Nehemiah* and the Jews did, *Nehem. 10.*) should fall upon them if they transgress herein! Say then that Tythes were not Originally due unto God, &c. yet are we in the case of *Nehemiah* and the Jews, *Nehem. 10. 32.* They made Statutes by themselves to give every year the third part of a shekel for the service of the house of God. And (so) our Fathers made Laws among themselves, to give a portion of their Land, and the tenth part of their substance that is, the Parsonages for the service of the house of God. If they were not due before, they are now due: For, When thou vowest a vow unto the Lord thy God, thou shalt not be slack to pay it, for *Jehovah* thy God will surely require it of thee, and (so) it should be sin unto thee. Therefore see *Act. 5. 4.* If the King give a gift of his inheritance to his son, his son shall have it: If he give it to his servant, his servant shall have it, (their times:) If the King then give a gift to his Father, that is, God Almighty, shall

not

Deut. 23. 20.

Ezek. 46. 17.

not he have it? or, the servant to his Master and Maker, shall not he enjoy it? Who hath power totake that from God, which was given unto him (if not by vertue of any command from, yet) according to his Word, &c.

Thus far that learned and pious Knight: Which yet I have not transcribed so fully as I meant, because the words of the Laws alledged by him, in the sense we doe, and for proof of the same conclusion, were represented in words at length before upon occasion; And yet thus much too was needful to shew content, that we vent not, nor invent of our own, but of the same words make construction to the same purpose, and have the same apprehension of things upon the same grounds he both had and gave: Premises and Conclusion the same from the same; for singularity either of opinion or proof brings always with it some suspicion. We see, he saith & here proveth, that beside Canonical, Natural, Moral, and as it seems unto him, Divine Law, our Civil Laws have added whatever of strength they can give to create a Topical and English Political home-right of Dominion & Power: *Jure Soli* as they use to speak, as well as *Jure Poli*, to settle these Dues where they are. The former may have been our Ancestory Principles and Rules which guided them at first in settling as they did, (and with these, many things else,) But now we little need to go so far, (unless *ex abundanti*.) for Surplusage of strength; for however it may have been disputable at first of the Natural or Moral right (as of sundry other things, Manners, Honours, Inheritances &c.) which concerneth also the Indians yet, or other Infidel Nations, in state that ours once was of, *To be converted*, where, nothing publick hath been done or passed for them; Yet as when *Ananias* and *Sapphira* had given, the state of things was altered, and their Duty or Danger; So here the Factional and Civil having made chains of continual and successive binding Ordinances to hold, retain, and keep these things fast and thus, Now the principles may stand by, the inference being justly made. stablished and of force. and without further inquiry, the *Stated Made Right* must be here enough, or None have with us any thing.

This worthy and Worshipful Knight (whose degree gave

him not so much title to those honouring Epithetes, as his Worth and true Worthiness, as we would call it Worthship, and who honoured his Titles, as much as They Him) was a man singularly Learned, profoundly Judicious, of most tender conscience, and lively, quick zeal and love of his God, and Christ, and that his flock which we call the Church: no way interessed, save to his own prejudice, and by his lay condition rendred incapable to reap any fruit of this Harvest, hee here so earnestly strives to defend from spoile, nor like to eat a bit of that bread, he here so zealously defends in behalf of the true owners, (*Memoria justī in benedictionibus*;) yet it pleased God to stir up his heart, and he that touched the Prophet *Esays* lips, with a coal from the Altar, no doubt touched his heart and quickned and directed his minde to indite, and his pen to write and set down many profound and unanswerable arguments for truth against sacriledge, kept secret from those that *stand always in the house of the Lord in the Courts of the house of our God*, as the Psalmist speaks, the professed and dedicated servants and Votaries of the Temple; and because uninteressed to make him the *fitter and more likely to be successful Champion* of Justice, Truth, and true Religion, in their outward visible supports, then those whose known interestles would always have taken of and diminished from the worth or effect of their sufficient, or never so well-meant undertakings and performances. Which outward supports let them be stirred when they will, (men may dream and think they prophesie, but) an ordinary Humane eye can in reason probably fore-see nothing but very soon & too sure the decay of Religion, the fall of the Church (as to outward frame, order, and support,) and Christian piety it self (I speak in humane consideration still) ready to fall flat down to the ground, or degenerate into Natural. God can sustain it miraculously, & feed his servants waiting on the Ministry thereof now, as he did his people in the Wilderness, or the Prophet *Elijah* by a Raven, or yet more miraculously without any meat at all; or perhaps in as equally strange and wonderful way, by the men of this world their voluntary Benevolence: But speak according to inferior proba-

Ecl. 67.

Psal. 135. 2.

1 Kings 17. 6.

probabilities as things depend here on their causes, or in humane expectation, which is to be our *lower* rule, and thus, He that considers the Course of this world, the sleight estimation that most have of the best things, the stony-heartedness of men to part with what they Once Have, the necessity of bread for man to live on, and the unlikeliness of enough to come in for this end any other way, Cannot but conclude (the rather, because some Preachers have been reported starved of late, One by very likely information I knew, conformable enough to the times, yea zealous for them,) that there is much cause to *Fear*, lest the Light fail with the Candlestick, the Ministry fall with the Means holding it up, the Gospel be a silent word when there is no voice of a Preacher, nor will be Preaching much longer then holdeth out this Maintenance. Those Labourers of the Lords Harvest fixed in their Stations are not like to be preserved much longer in Being, Health, Order and Number, then this accustomed food is allowed them which they may Claim as their Own (not being beholden to Others, or Depending, which is always grievous to ingenuous natures.) But as they labour so be sure to live. Plenty and delicacy are not the things stood upon: Religion, though she know how to abound, as well as to want, and how to dispose of superfluity as well any other, yet she cares not or stands not much upon Wine and Cates; Let the Epicures and men of this world hunt after this draugh & sensual contentments whose empty and carnall souls know no other means of contentment or comfort, *whose Belly is their God*, Phil 3. 19. *and Glory their shame, minding the Earth*, as the Apostle speaks, and whose care is onely to feed, grow fat, and lie down with the Swine, 'tis much to be doubted also to rise with him: But Being and Comfort are those Blessings which even the Children of God desire to be made partakers of in this world with submission to the will of their Heavenly Father, To have *to live of their Own*, and not be *burdensome* but rather *helpful to others*, their reasonable desire, And that they may finde the Scripture true, (1) *They that sow spiritually*, (1) 1 Cor. 9. 11. *'tis no great matter if they reap temporall*; and (2) *Let* (2) Gal. 6. 6. *the Catechumene* (He that is taught) *communicate unto his Catechist*,

(1) For, near so many distinct Parishes there are in England already, & such needfull Chapells, & Farms much requireress of more by the over-grown bulk of Dwellers in Sunday laces since the last distribution.

■ King. 13.23.

Catechist, (or Teacher) (which how can it be done better then in the way of the Tenth of all?) *ἐν παντί, in all things necessary*, or as 'tis usually rendred *in all his Goods*. This is that men *In this world* though not of *this world*, will always stand upon while they live here below in this scratching and scrambling world for honest as well as necessary ends; O that mine eyes could spy a way, if that *which is*, mens greedy parcimony and stubborn persisting in Unjust as well as Covetous desires will have no denial but they will be left at liberty to pull away, How a constant supply should come in (while men have souls,) to support an Army of near (1) ten thousand able Commanders, who should prattide and govern (decently, orderly, and as becometh the Ministers of Christ) over so many dispersed Congregations. The slender endowment of many Vicarages not hitherto at all increased, The wretched allowance of little more then some Shepherds wages usuall for Cure of souls, and by the bounty of the Parish seldome or very little augmented, The yet worse way in many other places, where was more liberty of raising a support by voluntary rate and less expectation according to Law or Obligation by it, Do give cause of even *Trembling fear* to think, when this liberty shall be enlarged to All, and men be bound to pay no more, then what they can be content to allow themselves to be forced to part with, Whether then there will be almost any discharge of Cure at all, or the weekly sacrifice perhaps altogether cease, if the necessary supply of means for the outward bodily labour, should be suffered to come in in that Experienced scant way, which hath hitherto left the highest and best house in the Parish no better furnished with a Levite to serve (or rather to starve souls) then were *Jeroboams* Priests heretofore, *the lowest of the people*? O Christian, if thou be, look upon the Inappropriations (as styled) in generall, Behold there the Image of *Baruch* lean kine in the slender slack allowance usuall, a next to Beggarly Exhibition of what would little more then keep a single simple man alive to Read, where Legall indowment had stated no more, A Faulconers or some good Journey mans entertainment exceeding what was usually allowed by the Re Tour who

who received all the Tenth from the people, And yet worse of my knowledge where the free-will-offering of the people of a Parish hath not for all the Kings Reign, nor doth yet raise above half a good Shepherds wages, about sixscore shillings yearly for the Shepherd of souls; And then, if thou have any Bowels of compassion over souls, keep them from earning if thou Canst, If thou have pity or love to Religion or Christian Men, think hereof and judge accordingly. Experience, the Mistress of Fools may at some times perhaps teach wise men more wisdom; Let it at least furnish us with Caution, by what has been to make some estimate what is like to be, What may, or will, or perhaps Must; and to be wary, look back, and Compare where no stated set allowance has been by Dues to be sued for, and then judge. I do not speak absolutely: I am no Prophet or the son of a Prophet, Our foresight of things in their causes is always here but dim and as of Probabilities; The suffering every man to walk in the ways of his own heart, in this matter, and to follow the light of his own eyes, *May tend* I confess to not the worst prejudice, or by altering but to snuffe the light that it may burn clearer and to more content of those shall both maintain and use it; yet no man hath cause to be offended with my jealousy in the things of my God, tenderest care and fear of the worst about his Honour, or that in zeal to the worth p of his Name I poure out my soul in devout supplication, *God grant it tend not to put the Light clean out! Heavens vouchsafe this great favour to Earth that Covetousness triumph not over Religion, and Having away what is thus Coveted, lead to and end in worse then Popish even Heathenish darkness!* For this I know, Heathendome (as the word was when it went off,) was here before Tythes were paid, Never effectually expelled but by them (outwardly, the Grace of God concurring;) The fence and Bulwark they have been that have kept out both it and other Errours God knows how many; If the fence be removed, whether the Beasts of the Common will not breakin? if the bank be cut, whether naturally there be not like to be a return of former inundations
dri-

ridven and kept out thereby? is left to reasonable judgement; we can but guess, God onely knows. This by the way : to return.

Our next impartial Council we crave leave to take Master *Selden*, who seems to offer himself in his printed Declarations: Learned Council indeed, and being Lay, and so altogether uninteressed for benefit ever will be presumed to speak with the more indifferency: and, when truch and the state of things permits, he comes up and fully home, as can be desired. He fluctuates indeed in time as long as any, but settles with the more judgement at last, and as he that chooseth and sifteth his Corn hath lightly better bread then he that takes what comes in his way, or out of the full heap: So hee that first examines, and then judges. Crave leave then to ask his opinion, *Are Tythes justly civilly due?* Hee hath already declared himself in publick in the hearing of all the world. Take but the sixth part of what he has laid down in his History, and it may be abundantly enough. Or but Secure the Jurisdiction, and That, as has been often said, is sufficient, the rest will follow of it self, for which Cast an eye back to what was said before. Will Possession do, or so much time as may create Prescription? for this also he hath said, and there hath been given from him enough, which may not here procure trouble by tedious repetition. Remember what he said *was Clear Law*, and since *Edw. 1.* time a Parochial Right Universal. It is not more certain that he wrote, then that in way to his design of, An History of What Had been, he lets fall enough for *Now due* and *the Right that is*: which bottome the result of his painfull disquisitions often settles upon. These two are the chief, and their testimony given in upon record, more then publick which goes forth to All, and being in Books deserves that of the Psalm, *Their sound is gone out into all Lands, and their words unto the ends of the world*: Perhaps may bee read and acknowledged in the Indies. Now after these it may be superfluous to adde the other that offer themselves, and
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in no less publick way still, *the Press*, that usually speaks with a thousand voices at once, and is heard, to any distance, the Eccho may remaine to all generations; As, *W. C.* in his Tything Table, printed in the Queenes time, and re-printed often since, 'tis in the hands of all men, and rivels out the generall Subject into many particulars: Doctour Sir *Tho. Ridley*, who hath laboured not unprofitably in the same argument: Master *Hughes* of Grays Inne; His Book is called, *The Parsons Law*: and Judge *Dodderidge* (or *Bracton* the second, for so I would compare and parallel their profound soliditie) in his, *Compleat Parson*: More there are others, scarce any One man knows how many, and they all contribute their united and uninteressed vote and sentence hereto, proving sometimes, but mostly supposing a Right, which is more, though the two former I chiefly rely upon. Ask the next man met, and if he know any thing, I know he must know this, and will I believe give it in Co-attestation with All, Nor can hee approve himselfe an English man that hath brow, (for brains he hath little or none, knowledge either of Discourse or Experience,) that can upon deliberation deny it.

In his view of the Law, par. 3.

C H A P. XXXIV.

IT remaineth next, Whether any thing hath been Done accordingly? Men have thus interpreted *Laws*; but their *Sayings* how many, or confident, or grave soever, though bearded with authority, alter not the *Nature of Things*, The exhibition whereof in Deed and View is that Reall proof men most look upon in the World and more, beyond the strongest Opinion or best interpretation; and What has been then seen the effect or Work of these Word and Book-suppositions? I answer; as much as well can be supposed or imagined; with assuranc enough too, even to the disposition and transposition of the tenth part of the wealth and Revenue of the land. For among All sorts of persons that had any thing, in All places, There is never a Parish in the Land, or Person of Cense and Possession, but the experience hereof has been given yearly in His estate, and submission to that power, that from one man to another created Right, according to received and obeyed Law: It was but Ask and Have, Seek and obtain, expect the season when the Course of Nature brought forth things in kinde, and take the tenth as it arose; None did *mutire contra* or resist or but obey. The Issue (as before intimated) was but Commonly either the Bounds, or Certainty of the Parish; If these two were well proved (whereof onely could be doubt) the rest came in of it self, and the force of these grounds of Law as before, so interpreted as now, carried the Tenth fleece, the Tenth Lamb, the Tenth Lock, Heap, or Sheaf, &c. all upon a Supposition All was right, and this as often as the things grew Due and demanded. Nor needed the Plaintiffe (that his quality, though he might goe under another name) to cast out for any Law, a Combination of Which, and the whole of a sort, united and deeply founded

was

was always in his behalf (1) supposed: This was put into his Libell, *tam de jure communi & Ecclesiastico, quam de antiqua, laudabili, legitimèq; præscripta consuetudine, jure percipiendi, recipiendi, & habendi omnes & singulas decimas tam majores, quam minores mixtas & minutas infra Parochiam de N. provenientes, crescentes, renovantes, & contingentes, ad Rectorem Rectoria de N. spectat & pertinet, &c.* and this a set way as in the secular form of pleading upon Briefs, which were always the same, like the laws of the Medes and Persians, without alteration; Nor may we well suppose any error to have crept in, or been admitted or retained Here, in that plea, which was a ventilation or exact discussion of the tenth part of the profits of the Kingdom. There is much both law and Constancy in those set forms, 'tis very hard to suggest or foist in any error to those known inviolable pieces; to (2) raise or alter a Writ, requires and has had the legislative power of the Kingdom: Of the like certainty, use, evidence and inviolable firm constancy and immutability was (no doubt) the way of transacting things here: If we light upon truth anywhere, we may hope for it in those lines which have been so often handled and reviewed, and which have themselves handled and disposed of so much of every mans estate, as in the whole amounts to that part which is the tenth of every thing. Some of many would have found the fault, if there had been any, nor could the iniquity have remained unespied, in that most men had their eye upon, and suffered by whereas none did Here, Therefore it is very likely to have been good and Right which All as Such have looked upon, and None been able to espy therein Errour or falsity.

Thus to the Cause have we subjoynd the Effect: To the Law before, interpreted now, the use and fruit in disposition of mens estates, Their wealth that dearly beloved of their souls with much patience being suffered to be transposed and change masters by its power, And sentences were to this purpose as usuall as tryals. According whereto followed no

Right, though they be in severall Courts, as by a Release either in Deed or Law. Hobbes Reports in Slades Case, pag. 295.

(1) Stat. of West. 1. c. 13, 4, 35, & 47, 13. Edw. 1. Stat. of Merchants, c. 7. Stat. of Quo warranto, 30. Edw. 1.

Qq 2

doubt

(1) Now touch-
ing the discus-
sing of tythes
themselves, &
the pleading
them at the
Common-law.
'Tis to be ob-
served, that
they are things
of Common
right, and doe
of Right belong
unto the
Church. And
therefore though
it be true, that
before the
Council of
Laterane, there
were no pari-
shes nor parish-
priests that
could claim
them, but a
Bishop might
give them to
what spiritual
person he
would, yet since
parishes were
erected, they
are due to the
Parson except
in certain spe-
cial regular
Cases) or Cas-
es of the pri-
ority And there-
fore when you
have a prohibi-
tion for dis-
course, (of the
validity whereof,
and when to take
place, he is there
speaking) You
must consider it
is a plea in bar
against Com-
mon Right to
a demand of
Tythes which
is a Common
Right.

doubt execution; who knows any thing knows this by daily everywhere experience, and as before we might not suppose forms of practised law erroneous and deceitfull, So here, that they should, being such, have found so ready and universall obedience, or that a wrongfull sentence should have intruded to take place, especially such to generall prejudice; Draining mens purses of much of every thing, and they (the whole world) so fast asleep, that no suspicion was stirred up of the legerdmain; Nor so much as any outcry heard of so spreading and universall wrongfull incroachment. Surely no: There was no such thing; but a Just sentence upon due proceeding: Both *cause and effect, Rule and Order. Law and execution were according to Right*: and as in any other the Kings Courts, these temporal-spiritual things were orderly and legally disposed of and settled Here, by that law, which ordereth, disposeth, setteth, and *even Giveth all things.*

Upon all which would follow also one thing more, That if all these things be Thus, Not Colours but of substance and reality, If such law have so passed and ought to be obeyed, and has, And to part with be now by vertue thereof Not *to Give* but *Pay, Debitum Justitie*, and of *Right Ought* (to the service of God) not *Debitum Charitatis*, a bequest of love and good Will: Hereby is way made, not onely of bringing home these Dues safe and sure to their Right owners the Just Claimers; but also of bringing home further all those forceable exhortations to the payment of them in Gospel-dayes, to Gods service, even under those Strong reasons which were heretofore used by the Prophets and wise good men under the Temple & Law; And with us may be said, *Give and Pay* these due *Debenturs* to the Christian service as wel and *upon the same grounds* as they heretofore used, & by which they were then urged to be paid. For they required them but as Due, Due to God, (*sc.* for his service) Due by their Law, Sacred in their Polity, and which Immediately came from God: Now although we do not so plead them as strictly (here) due by any divine Law among us given on the Mount, or written with the finger of Gods hand, yet *they are* by that Law: and Sacred too, and apportioning them to God, that is his service too, which, as before giving them, is ratified and confirmed (as all Just powers and Laws are) by him that dwelleth on the Mount, who approves and sets to his seal to be Just and Good, whatsoever Orders, Ordinances, Laws or devices his people (as so many additional, explicatory, or By-laws for the good, peace and order of the place where they live, not crossing the Common) shall make for establishing and perpetuating his honour by means of their own created Justice, and so a kinde of Divine, and certain,

though

though Mediate and consequentiall way of confirmation they have from the powers above still; At least ground enough to say in the sense of heretofore, (1) Give the Lord his Due With a good eye, and Consecrate thy tythes with gladness; Give (yea Pay) unto the most High according as he hath enriched thee, and as thou hast gotten give with a good eye; that Law which is in a lease his Sacred law hath commanded it: For, (2) All the tythe of the Land, of the seed of the land, or the fruit of the tree is the LORDS (Now) Holy to the LORD: And, concerning the tythe of the Heard or of the flock, whatsoever passeth under the Rod, it is now holy to the Lord likewise: Therefore (3) thou shalt truly tythe all the increase of thy seed, that the field bringeth forth year by year, and (4) Bring All into the storehouse, and try whether the Windows of heaven shall not be opened for recompence. My Tythe into my Storehouse: for (5) Behold they are given, (If not I have given, I have ratified their gifts who have given them) to the Levites of the New-Testament, for the services they serve in this tabernacle of the Christian Congregation. Moses said, Exod. 22. *Decimus & primitias non tardabis offerre Domino*, as in the Old Latin: And King Alfred says, *Thine Tything-scor. &c. give thou to God*, in his translation and imposition of that law upon us, (which our just government, and by consequent Our God approveth:) K. Ethelbert said, K. Offa said, K. Ethelwlf, K. Edmund, K. Edward said so (both the elder and younger on this and that side the Norman turn) beside other, and it hath been digested, received, approv'd obeyed & practised by in our (6) Sacred Common-law, if I may so speak, that they Must and ought: And so we as They require Them, in the words of Scripture, the same words as They, and to the same generall end, upon the same ground of a kinde of English Sacred-Law. Pardon that Epithere, and admit a Justification: As such I look upon and May call all those which being Civill and Common as *Sanctions* even with us have a touch as it were and Derivation from God, and so All Sanctity or Sacredness cannot simply be abstracted from them. As the Wise, and in his memory so much revered Chancellor *Fortescue* averred and justified

(1) Eccus. 35. 10.

(2) Levit. 27. 30.

(3) Deut. 14. 22.

(4) Mal. 3. 8.

(5) Num. 18. 20.

(6) *Leges Sacratilumz, quæ constringunt hominum vitas, intelligi ab omnibus debent. Cod. de leg. l. 9.*

to our young Edw. 4. King Henry the sixth his Son in his banishment, making every Lawyer a kinde of Priest, and so far forth officiating in his Cure, as he duely and reverently gives forth the things of this Sacred Justice and Law. It has place where he is counselling him not to regard Military exercises alone, but to enrich his minde with noblest indowments of knowledg and piety, setting for his pattern, The Prince of Israel, who was (1) counsell'd to keep always a copy of the

(1) Deut. 17. 18.
19.

(2) Hæc ut audi-
vit Princeps, ere-
cto in senem
vultu, sic locutus
est. Scio, Can-
cellarie, quid
liber Deuter. quem
tu commemoras,
sacra scilicet prava ve-
lumen est; leges
quocumque et cetera
monia in eo con-
scripta etiam
sacra sunt, a do-
mino elicta et per
Moysen promul-
gata: quare eas
legem sanctam con-
templationem duli-
cedo est. Sed lex
ad cuius scientiam
me invitatis, h ma-
na est, ab hominibus

edita, et transiens terrena: quo, licet Moyses ad Deuter. iuramentum Reges Israel astrinxerit, cum per hoc reges alios, ad consimiliter faciendum in suis legibus, concessisset, omnem effugit rationem, cum utriusque iuramentum non sit eadem causa. At Cancellarius, Scio, &c. Scire igitur te volo, quid non solum Deuter. leges, sed & omnes leges humane sacre sunt, quo lex sub his verbis definitur: Lex est sanctio sancta, iubens honesta, et prohibens contraria: Sanctum enim esse oportet, quod esse sanctum definitum est. Ius etiam describi perhibetur, quod illud est ars boni & aequi, cuius merito quis nov. Sacerdotes appellat. Sacerdos enim quasi Sacra dans, vel Sacra docens, Sacerdos appellatur. A Deo etiam sunt omnes leges editæ, quæ ab homine promulgantur; Nam, cum dicat Apostolus, quod omnia potestas à Domino Deo est, leges ab homine conditæ, qui ad hoc à Domino recipit potestatem, etiam à Deo constituentur, dicente autore causarum (Aristotele) Quicquid facit causa secunda, facit & causa prima, altiori & nobiliori modo. Quare

Ex quibus erodis, quod leges, licet humanas, addiscere, est ad discere leges Sacras & edictum Dei, quo eorum studium non vacat à dulcedine consolationis sanctæ. Ferrese de legibus Angl. cap. 2. & 3.

(3) Vid. Gloss. lex est. ad Inst. 1. de Iur. nat. & gent. sect. 4. & Gloss. non faciendorum. ad ff. de legibus Senatufque. lib. 1.

(4) Quomodo leges sanctæ, vid. ff. de rerum diviis & qualitat. l. 9. sect. 3.

fore

of TYTHES.

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fore We are Priests. And all Laws are from [1] God, though published by Man: For whereas [2] the Apostle saith, All Power is from God; The Powers that are, are ordained by Him, Law made by such derived Authority, derives farther, and impresses the stamp of Authority from the first Cause through All, for as much as, *Whatsoever is the Cause of a Cause, is also a Cause of the thing Caused.* Whence [3] Josaphat to his Judges, *Ye do Gods work, Ye judge not for Man, but for the Lord.* So that Every Law is then Holy, Every Statesman may look upon himself as a kinde of Priest, every Magistrate a [4] kinde of Minister of Holy things, (Their Study gives them such, though their Trade may be unrighteousness) and no word can better fit a dying Patriot then these of Eleazar, 2 Mac. 6. *ὡς τὸν στυγερὸν καὶ ἀγίον νόμον ἀπεδιδάχαί μοι, to be ready to die for the sacred and venerable Laws of his Country.*

Thus then All Laws are Sacred, as derived from God, and backed with his authority, though made by man, and so Ours, and so that which is of this sort in particular: which occasions fit and full application of those Texts of Scripture in the just import of the words and their full vigour of sense to have Tythes brought in, as thus Scripture now requires (these Acts of State and Right supposed, which also are) and they sin against that Sacred Law, yea a double sacred Law, *Mans and Gods*, (in Mans or above Mans, having Mans under it,) who do not Pay. Some question hath been hitherto of the [5] *jus divinum*, whether now Any such be of force to bring in this Revenue of the Temple among us? and there be that affirm as well as that deny, as they finde light or darkness in the Letter of the Scripture (which, immediately, they rely on) in their apprehensions: But this strife may now be

(1) πᾶς ἐστὶ νόμος ἐντομὴ καὶ δόγμα ὃ ἀνθρώπων θεσπίστων, ἐκ νόμου καὶ τῶν ἐκείνων καὶ ἀποτίων ἀναγκαστικῶν. ff. de leg. Senatusq; L. 1.

(2) Rom. 13. 1. (3) 2 Chron. 19. 5. God is with you in judgement.

So Exod 18.

19. Do I will and God will be with thee.

(4) Οὗτος γὰρ διακονὸς ἐστὶ τοῦ ἐκ τῆς ἀγάπης. Rom. 13. 4. Dei enim ministri est. And, Ministri Dei sunt. ver 6.

(5) Albeit we be now free from the Law of Moses, and consequently not thereby bound to the payment of Tythes; yet because Nature hath taught Men

to Honour God with their substance, and Scripture hath left us an Example of this particular proportion, which for Moral Considerations hath been thought fittest by him whose wisdom could best judge; Furthermore, seeing that the Church of Christ hath long since entered into Obligation; It seemeth in these days a Question altogether vain and superfluous, whether Tythes be a matter of Divine Right, Because, howsoever at the first it might have been thought doubtful, our Case is clearly the same now with theirs, unto whom St. Peter sometimes saith, While it was whole, it was whole Thing, When our Tythes might have probably served our Own, we had colour of liberty to use them as we saw good; But having made them His whose they were, let us be warned by other mens example what it is *ὡς τὸν στυγερὸν καὶ ἀγίον νόμον ἀπεδιδάχαί μοι*, to wash or clasp that Cain hath on is the mark of God. Hookers Eccles. Polit. L. 5. Sect. 79. p. 499.

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well stinted, unless for double strength among us, for as much as in a certain clear, but mediate and consequent way (the Act of Man having given, and the Authority of God above confirming what is done below) that divine print reaches through no doubt in the way hath been shewed, and cannot but stamp somewhat of heavenly and the Supreme Power upon the Acts that have passed of Men, and so for the *Commandments sake*, yea for that is by derivation, approbation and undoubted confirmation the *Divine Commandments sake*, they are now Due and must not but be paid, as in *Israel*. *Rebus sic stantibus*, or as things have passed and now are and remain, they are (I say) unquestionably *Thus due by Divine Right*. For the Magistrate is Gods [1] Minister, Every just Law His Ordinance, *Vox Legis, Vox Dei*, and every syllable and sound thereof quickned with an additional spirit of divine infusion, (according to our Scriptures, and as we have from *Rom. 13. 1 Pet. 2.* and other places.) And sith then here the Magistrate and the Law have proclaimed for them, whither they be due as in *Moses to Israel*, by the Text of *Leviticus*, or by vertue of any Gospel, or the Epistle to the *Hebrews*, seems not so much material, at least not necessarily considerable, for as much as though this were considerable at first, yet now they are Here fast enough by what the Magistrate has done for them by his Vicarious power and substitute authority. *The Powers that are are still ordained of God*, as was also said before; He sticks not to set to his Seal to what has been orderly past in lower Courts, approving and commanding what they prudently and justly do, and it ought not, for Gods sake, but be obeyed: so that whether the general take hold or no, or universal, that Where ever the Gospel is preached this shall be part of its obedience, and the Labourer is worthy of this hire, by divine Right; We have here a sure word of Righteousness, enough where unto we may do well to take heed, as unto a light shining in a dark place, and if Not the General Divine Law, *Decima ut Dives fias*, or, *Non tardabis offerre Deo Decimas*, yet the other General is topical, and directly binding in our Meridian and Clime, *sc.* that we must *Do justice*, That we must [2] *Render to every one his Due* for the Lords sake:

[1] *Whatsoever*

(1) *If any one shall prove troublesome and stir Tumults, Confestim opera ac diligentia famuli Dei (meipsum dico) poenas sue inficitur dabit: says Constantine the Emperour. Theodor. Hist. Eccle. l. 1. c. 20.*

(2) *Rom. 13.*

[1] *Whatsoever is just as well as whatsoever is Pure*, [2] *To Caesar the things that are His, and to God the things that are Gods*: And Thus *The Law of God*, (This Law) is thus brought about as quickning and so confirming *Mans*, and the duty hereby to *Us moral*, even to every English Christian, because This is sure such and most undoubtedly, [3] *That which is just and right, That O Christian shalt Thou do*. So the thing be brought about, no great matter which way; As if the Arrow hit the Mark little inquiry how it came thither; Now Divine Authority backing (of which there is enough,) and seconding humane Ordinances, The rest is easie, and unless for double strength (as said) we have not so much need to inquire for a Divine Letter, because we arrive at the same point safe and sure in the other way of Humane: for if Man have settled, and God commanded to be paid, He have given, and the Magistrate, who is Gods Vicar, allow and injoyne payment; Now even for Conscience sake that may not be omitted, And whether the Scripture or Nature say any thing in the Case particularly home, They say enough in establishing humane Ordinances, (which will bring God along with them,) and Man for God must not but pay what Man has settled for Gods Commandment sake. So in this (new) way here is *ius Divinum*, or Divine Right stil Mediate and Consequential, but sure and certain, which perhaps may not be in *Virginia* or *New-England*, where the Gospel may be yet in full vigour, or in *Madagascar*, or *Japan*, if the same holy Rule should there finde obedience; The Climate alters, and some particular things done *Here*, which (I think,) *There* have not, and thence indeed *This difference* and *Our preferment*: And suppose they, (that is either those remote strangers, or our Brethren at home that Rely on Divine Right *in scriptis* or the very Letter of the Law,) should lose all with that Letter of Scripture, and their proofs falling short from Text or Reason, they therewith fall short of all proof, yet in *this Our way* we keep enough in derivation of Consequence, and by Pre-advantage of a Civil Title granted and settled, we gain also another of another sort, Divine but Mediate, accumulate and lasting, even when the immediate and literal is (in reality or supposition) taken away

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(1) Phil. 4. 8.

(2) Matth. 22. 37.

(3) Deut. 16. 20.

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(1) 1 Pet. 2. 13.

In short, we need not doubt of a *Divine Right*, Here, *Wish Us*, while there is a *humane Ordinance* prevailing, and a *Divine inspired* [1] *Apostle speaking from God*, we must *Obeie every Ordinance of Man for the Lords sake*: The first of which has had attempt of plentifull proof, submitted to judgement, and of the last no Christian admitteth doubt. Yet speak I not any of this last to evacuate or infirm that or their opinion who go another way to stablish the opinion of *Divine Right* by their fair and solid Arguments from the *Text*, as if I would withdraw mens mindes from the love and estimation of their Gold, pretending here is Silver, and then if this fail after a while they are wiped of both, and have to trust to Neither: No, these are *severall*, and this *Another*, but not a *contrary* or *cross* way pointed to, they do not *justle* but are *very Well* and *fairly consistent* and *composeable one With the other*, and this prop of Wood may help, if that pillar of Brass fail (or be misplaced,) This string may hold, if that chance to break, or perverse men will not be held by it; And in this *additional* or *supplemental* way it may be acceptable also to those who are more strict for the *divine Right* immediate, which, be it what it will I keep promise of within the *Circle of mine own Sphere*, Be that, or be it not, This I believe is, and this advantage enough hereby if we have it. To conclude, let the things be considered as before alleadged from the parts of the Law dispersed, Councel interpreting, and (which is most material to Exposition,) the practise and Seen Force of the Law *thereby*, and we cannot from them I think, but conclude, 1. A certainty of Civil Right, and by that bottom of rooted Law, that gives all things. 2. A probability of Divine Right, mediate and consequential. At least the first, and with much assurance, *Id quod erat demonstrandum.*

C H A P.

CHAP. XXXIII.



T remains for inference and application to the just conscience, that every sober and well-meaning Honest man quietly and orderly compose himself then to his duty in obedience, and if this burden be duly and fitly laid on, & on Him, to take it up and go away with it as contented, not wrangling or quarrelling to his due shame & abominable sin, as well as manifest injustice & dangerously seditious disturbance, But be satisfied with his own, & give out to others with willingness what is theirs, He acknowledges and must acknowledge, and not His. My Lot may be of the Receiving part; If it be, I may justly expect *mine own*, & require it, & demand it, and unless my Christian perswasion be against going to Law for any thing (which has colour from 1 Cor. 6. 1, 5, 7.) if it be denied, as for any other Right, sue for it. Or if my lot be on the paying part here I have both leave and duty, not to [1] murmur or complain, shift or evade, but meekly, gently, and Christianlike do what belongs to me, reckoning my self no Honest man, unless I have thus much Honesty to be Content to give every man his Due, yea not as the Ox or the Slave, meerly for fear of the whip, but from forwardness and readiness, quickned by the inspiration of my Religion, whatsoever I do (as unto the Lord or unto Men) doing it Heartily and willingly, as knowing I am bound to keep my rank ([2] *coram vobis*) not onely for wrath but for Conscience sake. For [3] *God loveth a chearfull Giver*, and a chearfull Doer, and it is the great commendation of Christian Religion that it makes or *leaves* none slow or indifferent in any good Duty, but addswings to the

(1) *Do all things without murmurings and disputings, that ye may be blameless and harmless, the Sons of God, without rebuke in the midst of a crooked and perverse generation, among whom ye shine as Lights in the world, holding forth (thus) the word of life, that I may have comfort of you in the day of Christ,*

that I have not run in vain, nor laboured in vain, Phil 2. 14, 15, 16. See also 1 Cor 10. 10 and Jude ver. 16. Sure thou art a Gospel sin.

(2) Rom 13. 1, 5. (3) 2 Cor 6. 7.

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weary or heavy doubting soul, more readily, effectually, and chearfully to do every thing ought to be done *for the Lords sake*? 'Tis said there are some whose Consciences will not give them leave to issue forth these Dues, according to legal Obligation and all just expectation, even as just as any is in the world; But I ask almost in the same words, whether their Consciences will give them leave to pay their Dues? A Just Assessment? Stated Rights? A Quit Rent, a Fine, a Releif, or any Just Imposition? Set aside *Leviticus*, *Malachi* the Epistle to the *Hebrews*, yea the whole Bible: This Rent-charge as it were, *is so due* by Civil Justice; will they now be Honest Men? If they answer but Roundly and home to this, I have as much as I desire. Will their Consciences give them leave to pay their Debts? what is doomed such? If this be not a Debt to the due Receiver, a yearly profit issuing out of their Lands to anothers use by Law, Nothing is due here in *England*, and for this is the strength of the whole Treatise going before. Thou sayest, *I cannot prove Tythes due by the Law of God*; I went not about it, but if I can by the Law of Man, this is enough for thee: thou repliest, *Leviticus is abrogated, the Hebrews dark, Abrahams and Jacobs but examples*; But wilt thou pay a Custome, or Toll, or Tribute, or legal Taxation? Is a Rent-charge due, or Relief, or Quit-Rent? By what Obligation soever thou shalt confess There, by the same and of equal strength I will make good my Plea here; Where art thou now? Wilt thou pay both or none? What but English Sacred Law gives the one and the same gives the other: Pay or deny, both or neither, the equity is of equal measure, strength, and evidence for both together: O Christian, let not the World deceive thee: Let not the God of this World blinde thine eyes: If thy Covetousness hinder not, thy Conscience may well serve thee to pay thy Dues, yea, *would Constrain* thee, that is *more then Permit*, for true Religion does more then Give leave, Command, and Injoyn men to be Just and Righteous.

Nor let any one say, *These are Trifles, far below the heights of Heaven: May not a man keep a good Christians Conscience to God Without troubling himself with these Levitical Ceremonies?*

monies ? Hearken man, This is a part of our Moral Righteousness, as things are Now with Us a part of Necessary Justice ; A man can be with Us No more Unrighteous or Unhonest then he can here make light of this part of his legal Duty. Nor let him say, *I have given my name to Heaven, I have weightier things in consideration, Must I interrupt or pull down my higher thoughts from devotion faith and Spirituals to these, which when a Pharisee boasted exact obedience of, he remained but a Pharisee ?* O Good Man value things as they are ; Thou wilt not neglect Earth I hope in order to Heaven, or suffer thy Religion to leave thee Not Honest or Unjust ; Must thou not deal Truly in these lower things before thou art fit to be trusted in higher ? Or is Moral Justice an Heathen vertue, meer stranger to the power of Godliness, and Not regarded at all by the God of the Christians ? Does not thine own Saviour say, (Believe not me, but believe Him, and believe me but as I do with fidelity and trust dispense the the Truths of, for, and from Him,) that [1] *He that is faithfull in the least is faithfull also in much ; He that is unjust in the least is unjust also in much ; If therefore ye have not been faithfull in the Unrighteous Mammon, who will commit to your Trust the True Riches ?* Nor let any further excuse with the pretence of the Nature of Things, *He hath weaned himself from these lower to better : Faith, hope, praise and prayer, &c. do so take him up that meaner things have less regard justly, He is for the Height of Holiness.* And I will believe him as soon, as that, He hath climbed the Pinnacles of Solomons Temple, who is scarce got up the steps of Solomons Porch, That he that is Unjust can be Holy, or that Good man fitted to be a Citizen of the new Jerusalem, a Free-man of the Kingdom of Heaven, Who wants necessary qualifications to live in an honest, well-governed Commonwealth on Earth. Shall Heaven be furnished out with Dishonest men ? or the legal Members of that Citie be Defrauders and Deceivers ? Does not the [2] Apostle say, (What can be plainer ? *Be not deceived, (Some are apt to think so,) That the Unjust, Idolaters, thieves or covetous shal ever Inherit the Kingdom of God. And such were some of you, But ye are now washed,*

(1) Luc. 16.
10, 11.

(2) 1 Cor. 6. 9.

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Apoc. 22. 15.

Rom. 14. 22.

Chap. 1. 1.

Iohn 169.

2 Sam. 12. 4, 5.

Luk. 23. 42.

Phil. 2. 18, 19.

(1) Gen. 42. 35.

(2) Luk 49. 8.

Chap. 12. 33.

Mat. 25. 35. &c.

AQ. 26. 27.

2 Tim. 1. 13.

(or else had no hopes there) *but ye are cleansed, but ye are purified, but ye are justified. Without are Dogs and evil Doers.* Thou art apt to condemn a Thief or a Robber, the cry of the whole Countrey is against Him, What! He that grows Rich by spoil, takes another Mans Goods! I confesse, his crime is something more, but that a part, and his whole sin, and wilt thou take the crosse to that of the Apostle, *Blessed is He that condemneth not himself in the thing that he alloweth; Thou that judgest another, Doest Thou the same thing?* We are bid to *make us friends with the Mammon of Unrighteousness that when need is, we may finde Everlasting succour*: Sure this by Just dealing at least, I believe more by unjust or unnecessary Giving. Is not Unrighteousness sin among Christians? or True dealing, to Give every One his own, onely a superfluous part of Goodness? Welfare then *Achab* and *Jndas*. That Oppressour had too severe a censure in *Nathans* Parable for *taking away the poor mans Lamb*, and the Thief upon the Crosse committed a work of supererogation in repenting his theft in the way to his Paradise. Saint Paul needed not have cared for *Onesimus* debt, nor the sons of *Jacob* excuse the stealing of the (1) Plate, (if it had been so:) (2) *Zachem* stood forth, and out of superstitious piety Gave to the poor, and if I have *Wronged any*, I restore him four-fold. O no, These vile things of the Earth have Heaven at one end, We may make us *bags that waxe not old*, or lay up treasure in Hel with them as we use or abuse them; Christ will pronounce sentence upon Those *Dispensations* at the last day, and if we shall be punished for not being mercifull, what farther if we be unjust and injurious! Is the Word our Rule! Brother Christian, *Believest thou the Scriptures?* If thou do, stand fast to thy ground, *Hold fast the form of sound words as they were delivered* and thou didst receive them, Make good thy faith also in thy works seen before men, & let thy life be a justification of thy belief, a counterpart or exemplification of Thy book of Religion. Be assured of this, there is not held forth any where in the world a better picture of *An honest Just man* then in those sacred leaves is described and painted out to the life, Which every believer is bound to be by his Religion; Obedi-

Obedience or Exhibition of himself Such must render him (the Childe of God) such a Just Dealer therewith, And thy necessary conformity to that Law shall make thee *A Pattern to all the world for Heathen Honesty.* This is a part of that *μεταμορφωσις* or Transformation in difference from that Conformity to the unjust sinful world before, *Rom. 12. 2.* Dress thy self by this glass, and thou wilt not count thy self ready without this habit, Adorn thy self by these directions, and thou must put on this Moral qualification, ('Tis a part of the putting on the Lord Jesus Christ, *Rom. 13. ult.*) nay, shine bright in it, *abounding in this work of the Lord*, or thou art no warrantable Christian.

1 Cor. 15:58.

Shall this be now disputed or doubted? Shall I stain the reputation of Christian Doctrine by this that it has not as clear as day, *that every Proselyte thereof must give every man his due?* or, it may leave me as wilde and conscience-less as a Thieving Tartar or wilde Arabian that takes what he can get, and parts not with what he can keep? I may not sit down with, *Being just onely*, for the power of my faith brings about and should bring in all parts of *Civil Justice* by a *Stronger Spring* then is to be found again in the world, I must doe Right for Conscience sake, I must do No Wrong for fear of Heaven seeing me, (*how should I do this Evil, and sin against God?* as *Joseph*,) I must not take or withhold, or retain, or not give out what belongs to another *sub pena ignis gehenna* under the most intolerable penalty of assured and believed Hel fire. Come home yet more near, we pretend to our age of Light: Have we heard so many Sermons, waited upon God so long in his Ordinances, Sanctified every returne of his holy Sabbath, Wrestled with him as *Jacob* in daily long Prayers, set aside so many whole speciall days for Fasting and Humiliation to seek the Lord while he may be found, and call upon him while he is not utterly gone to the Indians, Tartars, or other Nations, that yet know not God, and shall we arrive at the last with all this pains at this point of perfection, that we are now come to doubt whether wee may do right or wrong! whether we may equall the injustice of *Entering the field of the fatherless, whose revenger is*

Gen. 39. 9.

Mighty!

Prov. 23. 10. And
Therewith a man
what before pa.
37. & pa. 344.

Mighty! whether we may not invade, covet, take, hold, or withhold, what has been shewed to belong in Right to another! If it Do, we will yet have it, and hold it, and not part with it, though (if we believe our Bible,) we know we shall be burned in the soul for it, with a coal of *Ignis fortis*, or rather of *Ignis inextinguibilis*, that fire of Hell will never be quenched! Do we continue to boast of light from Heaven, the Sun shining clear in the Firmament by the allowed use of Scripture, and the bright beams thereof dispersing and darting their full power daily from the Pulpit such a long day as has outlasted the years of many generations, with so many repeated impressions and dispersions of Numberless Numbers of English Bibles, that it hath been an amazement to some that live neare the well-head whence those waters of the Sanctuary flow, and others conjecture the Enemy buyes them up to burn them in private, sith in publick and for Heretical yet he cannot, And shall the English fruit of all this promising seed time be, our doubts come out seriously in any of the scandalous ways before, or our carnall hearts have admitted no operation to obedience in such clear and undoubted evident matters, But alas, some part of our Neighbours Due inclosure we would take in and hedge to our own, though we make bold with the hedge of Gods Law for it, His corruptible wealth we cover, His silver or gold we take or withhold, (or what has equall right) His Mammon of unrighteousness, as we account, we *santum non* sacrilegiously seize upon for our selves, and to prevent his idolatry, we put it into a private place, as it were, that we Our selves may worship it! We love it, we desire it, we keep it, we cherish it, we will not part with it, though God himself become intercessor for Justice, and stand as it were at the Magistrates elbow, backing his command with a higher accessory Authority, *Nec vox hominem sonat*, there is somewhat more then meerly humane in that loud and publicke voice of *The allowed Law*, at least *Aliquid Divini*, which God uses to impart to that substitution of himself and Vicarious power, which *who so resisteth, resisteth the Ordinance of God, and they that do so resist, must look to receive to themselves*

selfes damnation. What shall we say to this, if the enemy should lay this to our Charge? (as be we sure God will be our enemy, and put it home severely unless we repent and amend.) Is this a part of our Gospel-righteousness! a fruit of our holy Religion! that will consist with our Justification by Faith, and shall we furnish him with arguments or sophismes enough against that opinion or the consequents thereof by Such a Life! *While we have the Light*, doe we thus walk *in the Light*? giving him occasion to say, These are the works we see they do, (*By their fruits shall ye know them,*) We know it of them, for we see it: This is the Harvest has been long a growing, and the fruit they reap among themselves of their many years use in freedome of their *English Bible*. Now the Lord rebuke thee Satan, that thus sittest between the lips of seduced benighted men, to blaspheme the ways of the living God, or the courses or things they do not or will not understand, not distinguishing between Heavens blessing and Mans abuse, the fruit of Gods Ordinance and Mans Corruption; and the same God give his servants grace to carry themselves so inoffensively in word and deed, that no merit of their misdemeanour may hereafter give occasion of such reproach, but behaving themselves *in all things as the servants of God*, and having a good conscience, *whereas men speak evill of them, as of evill doers*, They may be ashamed that falsely accuse their good conversation in Christ; having also honest conversation among the Nations of the world, that they may by good works they see Done, glorifie God in the day of visitation. This sure, the English Bible is a rule good enough of all righteousness, profitable for doctrine, reproof, correction, instruction, that the Man of God may be perfect; the light thereof shines from above and guides thereto, and the end of its obedience undoubtedly everlasting life. Which blessed Book sith so lighted on again, let us a little sit still to turn the leaves thereof onely, it may fit our close to end with God, perhaps we may there meet with some Angel of His in the way, with his sword ready drawn in his hand to stop our Career in stubbornest resolution to go on in the ways of our own heart; I will suppose clear what proved

John 12 35.

Mat 7 16.

1 Pet 3 16.

Chap. 1. 12.

2 Tim 3 16, 17.

(1) So R. V. sta-
gan compounds
and desires that
word: as if it were
God. *Is. 48* Spel
a Mysticall
Speech, or an O-
racle, *Antig. pa.*
223.

(2) Exo. 29. 5.
Fl. 5. 5. — 28. 3
— 36. 2. — 37
1 — 66. 18.

Eccles. 3. 16. Eccl. 5.
18. — 57. 17.
March. 17. 23.
2. Tim. 2. 19.

Tit. 2. 14.
(3) Exod. 32. 28.
— 33. 9. Psal. 12
5. Prov. 14. 28.
— 13. 16.

28. 3. 1er. 7. 6.
Ezek. 32. 7.
Amos 4. 1. Mich.
2. 2. Z. char. 7. 10
Iam 2. 6.

(4) Exod. 20. 15.
Lev. 19. 11. Deu.
5. 19. Pro. 30. 9.
1er. 7. 9. Hol. 4. 3.
Math. 15. 19.

— 19. 8. Mar.
10. 19. Luk. 18.
20. Rom. 2. 12.
Chap. 13. 9. Eph.
4. 18. Rec. 9. 21.

(5) Lev. 19. 13.
1 Sam. 22. 3. 4.
Mar. 10. 19.
1 Cor. 6. 8. 2. Cor.

7. 2. 1im. 5. 4.
(6) Job. 19. 7.
1er. 22. 3. 13.
1 Cor. 6. 8. Col.

3. 25.
(7) Lev. 19. 13.
Pla. 119. 61. Pro.
21. 7. — 22. 22.

With a man rob God? yet ye have robbed me. But ye say, Wherein have we robbed thee? In Tithes and Offerings. Ye are cursed with a curse, for ye have robbed me, this whole Nation. Mal. 3. 8. 9.

that the Ministry has right, (as things stand) right, and their spoliation is wrong, and then O brother Christian, Go along with me, and see what thou wilt say to thine own believed, received, inspired, and that thy self takest for Gospel (1) Gods-spel,) thy revered Divine Oracles.

And first, doth not that Heavenly Law forbid generally All (2) Iniquity, (3) Oppression, (4) Theft, (5) Fraud, (6) Injury, (7) Robbery, (8) Surreption, Extortion; and that (9) No man go beyond and defraud his brother in any (worldly) thing, for God is of all such things the Revenger most severe, as is everywhere said and testified! Does not one of the Tenne Commandements (which children learn in their Catechismes) appoint, Thou shalt not take what is anothers, *Thou shalt not steal*. And mayest thou then pervert, suppress, withhold, detain, and keep to thy benefit what belongs to another, and tends to his impoverishment as well as stealing, perhaps to his starving, certainly to the Wronging both of himself and family? Is this no sin in thy Christian judgement? — Doth not another of the same Laws say, Thou shalt not Covet? What? thy Neighbours House, Wife, Servant, Oxe, Ass; and that All? Is it not as well his Sheaf, Lamb, Fleece, Apple, or Egge? for the reason is the same of both: Or, dost thou think God will be so pinned up in his holy and just intentions against All wrong to some straitning interpretations of thine, as may leave Thee loop-holes open, evasions or shelter for in any thing thy wretched Covetousness? Be not Deceived, God is not mocked; To covet is the sin, not *This* or *That*, 'Tis the injurious intent not greatness or kinde of the object of that injury is forbidden; And to make all sure, the close windes up all in the largest and most comprehensive Universality, Not this, nor that, but, *Nor Any thing that is thy Neighbours*. Look upon them again: These are two of *Moses* Commandements, of Gods Laws, ('tis much in so small an Enchiridion or Summary of duty, the same should

(8) Ex. d. 22. 12. Mar. 23. 25. 1 Cor. 10. 11. — 6. 10.

(9) 1 Theft. 4. 5.

finde a double place by prohibition and repetition) engraven
 on Tables of Stone, but a transcript from the bosome at first
 (a true Ectypon of that Original,) of which our Redeemer
 and Law-giver, says, *Heaven and Earth may pass but these* Math. 5. 18.
shall not, and which thou art with equall strictness bound to
 keep, as that, *Thou shalt not ly, Thou shalt not blaspheme,*
Thou shalt not murther, Thou shalt not commit adultery. Wilt
 thou not These? Darest thou Those? Mayest thou not mur-
 ther! Wouldest thou Covet? Wilt thou not Ly, and yet
 Stealest? Or, *Thou that abhorrest Idols, committest Thou Sa-*
cridege? Thou that boastest of the Law, through breaking
the Law dishonourest thou God, as well as disgracest thy self,
as it is written, The Name of God is blasphemed among the
Gentiles thus. As if any of them shall see us breaking our own
 Law, transgress our Gods Commandments, trample upon
 his Precepts, and make no care of the revelations of his Holy
 Will, not half so much as of an Ordinance of Parliament,
 Will they not blaspheme, traduce, rail, revile, nay, *male-*
dicere, Even Curse and profane our God, that has such un-
 towardsly disobedient servants! Will they think him a God!
 or think we Think him Such, if we thus misbehave our selves
 toward him! Doth not Saint James say, *He that breaketh*
the Law in One point is guilty of All? and upon this ac-
 count, because *He that saith, Do not commit adultery, saith*
also, Do not Kill, (or Steal, or Covet,) (the image of Au-
 thority defaced is the same) and doest Thou break Two and
 hopest to be innocent? Never justifie thy self that thou swea-
 rest not, if thou lye: Or, thou speakest truth in Civill
 matters, if thou blaspheme: Or, thou dost not kill, if thou
 steal or covet. He that defaces the image of that authority
 shining from God upon All the Law that procures its Re-
 verence, it is not far from his accounting any part a Common
 word, forasmuch as the same boldness that hath removed re-
 spect from any part, will by like occasion or temptation take
 off what is no better fastened nor can be any where: He that
 dares venture on the Chalice, needs not or will not scruple at
 taking the Carpet, or Bible, or Pulpit-cloth. 'Tis not a bro-
 ken collection, but a full and even Decalogue, All are equal-

Rom. 2. 22, 23, 24
Jam. 2. 10, 11.

ly Gods Commands, and backed with his authority ingraven and shining in the face of every one, As was said, *Heaven and Earth may pass away, but none of these shall pass.* It is God thou must answer *not Man* for neglect and transgression here, Whose Law thou hast broken, Not but more then Whom in Temporals thou hast injured and Wronged. *In the day when God shall judge the world by Iesus Christ*, remember then thou hast been told *Both*, both that *He that breaketh the Law in one point, is guilty of All*, and He who wrongs Here, breaks it in two, in Coveting and Taking.

Matth. 5. 20.

Heed next what Thy Saviour saith, and this is at least Gospel-Law; *Except your righteousness shall exceed* (saith He) (Yours, Ours, Anies, that is his Disciple) *the righteousness of the Scribes and Pharisees, ye shall not enter into my Kingdome of Heaven*: Now what was Their Righteousness? They paid dues Duely: Questionless they did so, else they had not been *Themselves*, that is, *Righteous*. And for this Particular, by the Providence of God it is so come to pass, that we have repeated double assurance, and from Christs own words again, what was their Righteousness This Way. First, in his Perionating a Proud Boaster amongst them, that *He paid Tythes of all he possessed*. Which if He had not, the supposition had been an untruth, the Man made to speak nothing to the purpose, Nor had he been brought in truly Commending, but indeed Belying himself, That hee should have done that he did not. Next in that Comparative exprobration, where we have that Exactnesse that

Luk. 18. 12.

Matth. 23. 23.

they Paid All to the least, They left none out *to very Mixt Annis and Cummin*, which our Saviour says, They Ought (*So it was their Righteousness*) to have done, and yet not have left Justice and Mercy undone. So that no doubt can be but they Paid, they paid duly, they paid of All, and this was Their Righteousness; and yet Christ to His Disciples, unless yours shall both Equall and Exceed *Theirs and This*, ye must not look to come within my Kingdome. Nor let any one observe here Duty on their part, They were bound: True they were so, but are we altogether Free? Have we not a Rule of Righteousness, in some sort as strictly binding as *Theirs*, to make obedience *duty*, not performance *Supererogation*? and

we

we as well as they are required not to give but pay? What else are those Laws before alledged many, and yet of force? Are they not All so many rules of Doing, or directing right forward in what way we must go, or we go amiss; and so by consequent our Conformity to them, our being Ruled by them must bring home the imputation to us of Going right forward or amiss, in the way of Righteousness or Unrighteousness, that We may be Just or Unjust as they?

We have no Levitical Law perhaps indeed, no *ius Divinum*, (at least not within my circle or which I insist on, though I forsake it not, much less disclaim or oppose it:) But we have yet without that enough of our own, and to binde fast enough, a Rule, a Law Sacred, in force, and binding, as hath been shewed, and whereto we ought to take heed as that which in some regard was parallel with Saint *Peters* sure word of Prophecy, and is our light and rule to guide us through the darkness and uncertainty of this world: the transgression whereof is also penall and with us sinfull too (for every disorderly liver is likewise a Sinner to God,) and it Must have the imputation of Righteousness or Unrighteousness, as We neglect or observe Here this Sacred, National, English Rule of our Doings. Nought else is the ground of Property, of Any property, that renders theft possible, or *Wrong* the Relative to *Right*; This is the boundary of Fields and Vineyards, cuts out to All their Lordships and Inheritances; and to obey or disobey, break or keep This, makes us as Culpable or Just, Righteous or Unrighteous, as by observing or transgressing his Judiciall Law the Hebrew could have been in Israel. No question but we have Law the Rule of Righteousness, as binding to us as the Hebrews in their Politie; we may be as Righteous as they, and yet if we be not more, we fall short of our High hopes; for *verily* (says Christ) *unless your Righteousness* (that are my Disciples) *shall exceed that* (parallel) *of the Pharisees, ye shall never enter the Kingdom of God.*

Or, likest thou better another Rule of thy Saviour? It hath in it as much of wisdom and equity for civill Commerce as I believe is to be found in so many words in the world again. Old *Tobit* had given it in the Negative before, *Do not*

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no other what thy self hatest. But Christ changed it to the Affirmative, Therefore *All things, whatsoever ye would that Men should do unto you, even so do ye unto them, for this is both* (Text and Exposition,) *Law and Prophets.* A most indifferent Rule, equall restriction, which nature suggests, Reason approves, Religion inforces, and All Nations, Perswasions and Men, will I believe say *Amen* to the Equity of: Thine own Saviour has inrolled it into the Sacred Tables of his Law too, the sum of his Moral Pandects, a short but full Declaration of needfull Duty, and doest thou resolve to obey, or refuse? If to obey, Ask thy self, Whether *Thou wouldst be content another should thrust thee out of thy Rightfull Right?* If thou hadst a livelihood to direct and minister in Gods service, or but to serve thy self eating and drinking, *Wouldst Thou imbrace it as acceptable good dealing* (any otherwise, then as thou wouldst submit to persecution) *to be turned out into the High-ways, and Hedges, to get what thou couldst finde in the Forest, imbracing the Hills for a shelter, and the Rocks for a covering?* If thou wert in present by due and honest forms of Law inducted and possessed *A. B. Rector Ecclesia Parochialis de C. and so tam de jure Communi & Ecclesiastico, quam de antiqua, laudabili, legitimèque præscripta consuetudine jus percipiendi, recipiendi, & habendi omnes & singulas Decimas tam majores quam minores mixtas & minutas infra Parochiam de C. provenientes, crescentes, renovantes, & contingentes,* did of right belong unto thee, (as was before in the Libel, and if proved carried the Tenth,) *Wouldst thou, discharging thy duty, and carrying thy self according to Law for what thou receivest by Law, be willing thy Neighbour should deprive thee of That Own?* and having right to receive the Tenth by the same title He retains his Nine, and would count him a Thief should take any away, *Think well of it that the great Fish should eat up the little one to make his panch swell, the Nine should devour thy Tenth,* and thou be turned out of the Sweet and Safe of thy Property to a good allowance, thou hast no reason to doubt or fear, thy good Neighbours will afford (for the labourer is worthy of his hire) in Charity and Equity?

Equity? Some Overseers Careful care shall see thy bowels fed, thy nakedness covered, thy needs supplied, thy poverty relieved, thy whole family sustained? Put thy self in case of his person Now under doubt of being brought to this state by thee, Deal impartially between God and thy soul, satisfy thine own thoughts in the proposition and resolution, and if Thou couldst accept, *perhaps thy Brother May*: If Thou Wouldst be so done to, *thou mayst the rather expect it of Him: Petimusque damusque vicissim*, What thou couldst be content to undergo, *thou mayst with more reason impose to have suffered*. But if *Thou abhorrest* the inconveniencies foreseen in this way, *Thy Nature* (regenerate or unregenerate, sanctified or prophane) hate the lowness or vileness if not baseness that must be consequent upon such an injury (when thou shouldst not have left what thou couldst call *Thine Own*), *Thou wouldst not by choice part with thy Right* any more then suffer an Extortioner to deprive thee of that thou hast, or the stranger to spoil thy labour; Nay, *Thou wouldst defend thy self* as against a forainer, a Spaniard, an Indian, or a Thief; *Then think what thou wouldst put upon another*, State thine own Case in anothers person, as *Nathan* taught *David* to see his Sin in the supposition of his poor Neighbour, Invade not thy brother, Put not *Him* besides his Right, Enter not *His* Possession, Disturb not *His* property: Allow *Him* the Comfort and Assurance of his *His Own*, which thou wouldst rather spend to the utmost farthing, *if not Dy*, rather then suffer thy self to be put out of, to stand to the Courtesie of Supplied with any Charitable allowance. Good Christian, *Do as thou wouldst be done unto, walk by thy Rule, Live as thou Believest*, or shelter not thy self under Profession with those of *Whom thou art not* Thou hast no reason to further or put upon one, what should not upon another, to force on his acceptance what another would decline, or upon thy neighbour what mainly Thou declinest Thy Self: Thou mayest think I have the same affections, desires, needs, necessities, the whole body of humanity and humane frailties belonging thereto to be supplied or yielded to that thou hast; The same infirmities, disease, emptiness, nakedness, to be fed, clothed, relieved,

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Tobit 4. 15.

Iam. 1. 22.

Rom. 2. 13.

Iam. 2. 14.

Ver. 21.

Ver. 26.

Eccles. 34 21.

ved, and in all regards worthy consideration as and in the way thou requirest, If Thou wouldst not trust to Nothing, if Thy self wouldst not be turned to the shame and misery of penniless bench, If Thy Love of this world consisting well enough with the Love of God would not be outed of Plenty and Wealth, stripped of property and left to uncertainty, *to justice, under penitus*, Be but as just and reasonable as old Tobit desired his Son, *Do to None (under, No not to One) what thou thy self hatest.* Whatsoever thou profellest, or receivest, or believest, Be a *Doer of the Word*, not a Knower onely, lest thou deceive thy self: for *Not These shall be justified before God, but Those*; And, *What doth it profit a Man that he say He hath faith, and hath not works, shall that faith Save? Was not Abraham our Father justified by Works, when he offered his Son on the Altar? Whence we see, by Works was his faith made perfect: And as the Body without the Spirit is dead, so Faith without Works is dead also.* I urge an Apostles words onely in His meaning, and that must sure imply Heterodox in opinion from none that is in Religion truly Christian. Proceed: Is there any such Thing as *The fear of God*? Does any Text of the Old or New Testament mention it clearly to duty? Dost thou Believe it? and that thou hast it, or oughtest to have it? and Canst thou then take or detain that which belongs to another? or lay hold, or keep hold of thy Neighbours Goods? Do not the Principles of thy Religion improve and heighten the in-bred persuasions of Nature, Teaching, and assuring thee first, That this is Wrong, yea *deuile* and so *deuile* Transgression and Sin, and darest thou *Then* do it, when thy Judge looketh on! pretend to fear God, and yet do what he Hates, and yet thou fearest him, and yet thou art confident to disobey him! Or, if thy filiall awfull fear be not yet awakened, let me Knock louder with that Thundring threat of thy Saviour, *Luk. 12. 43. And I say unto you my friends, Be not afraid of them that kill the body, and after that have no more that they can do. But I will forewarn you whom you shall fear: Fear him, which after he hath killed, hath power to cast into Hell, yea, I say unto you, Fear him.*

Did

Did not *Zachens*, Christ his host, come in with his injuries in his hand, and before he makes any question of his *Salvation*, openly professeth his *Restitution*? Behold, Lord, (1) saith he, *the half of my goods I give to the poor, and if I have taken any thing by false accusation, I restore him fourfold.* Then *Iesus* said unto him (Comfortably,) Then and not before, *This day is salvation come to thy house.* This (whether stranger or home-born,) demonstrated him to be one of the *Sons of Abraham*. This is The way back by weeping crofs: In the fore-Right of Injury no end probably foreseen but in Hell. He that Repents, must Amend: Hee that Amends, will Restore: For while the injury remains, is no alteration, and without alteration is no to better state-restitution. In the Scripture still, Does not the Old and New Testament require and joyn to call for Justice, Truth, Fidelity, Honesty? That which is (2) *Iust and Right shalt thou do, and* (3) *whatsoever is Iust*, as well as *whatsoever is Holy*: and (4) *Provide things honest in the sight of Man* as well as God; And sure the world counts this Honest, to give every one His own, the very Syllables of *Rom. 13. 7.* *Render therefore to All their Dues*, whether Tribute, Custome, Fear, or Honour: And *Owe Nothing, but to Love.* Or, if we doe not, *The wrath of God is revealed from Heaven* (even to true Believers,) *against all ungodliness and unrighteousness of men, who hold if it be the Truth, in iniquity.* Which, *Iniqui Regnum Dei non possidebunt*, 1 Cor. 6.9: and *Know ye not that it is so*, It is *Postulatum*, a thing grounded among Christians, and with Caution, *Be not deceived*: (Some may tell you otherwise;) The unrighteous, and who are They? *Fornicators, Idolaters, Adulterers*, ἀπονομοῖται, unfit to be Englished, (good company! and with them) *nor Thieves, nor Covetous, nor Railers, nor Extortioners*, a good part of them those that meddle with other mens goods whether by force or fraud, in deed or desire, subtraction or detention, violent Extortion or clancular Surreption, the sin, because the wrong, is the same, and Be not deceived, Do ye not know that *These shall not Inherit Gods Kingdome*? Should not the Kingdome of his san-

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ctified

(1) Luk. 19. 8.9.
Discimus ab exemplo quid faciendum sit iis quos peccatorum peccat. Primum enim quatenus fieri potest, resarcienda sunt damna aliis per vim aut dolum illata, quod ipsa natura dicitur: Neque enim peccare desistit qui alienis retinet. *Grati. loc. p. 789.*
Peccatum non dimittitur nisi restituatur ablatum. *Reg. 1. ur. Canon. 4.*
& Peccati venia non datur nisi correcto. *Reg. 5.*
(2) *Mat. 16. 30.*
(3) *Phil. 4. 3.*
(4) *Rom. 12. 17.*
Chap. 1. 18.

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etified and just Congregation, (his Church,) Here, but be cast out by Excommunication with profane Heathens, but *shall* not his holy and glorious Church of the first-born hereafter, where the imputation of moral Righteousness shall be the lowest qualification, The holiness of Saints shall be those white and shining glorious Robes without which [1] none shall be admitted to that Bride-chamber. Indeed *such were some of you* sometimes; but *ye were washed* (in Baptism) *sanctified* (from the first uncleanness) *justified* (from the other unrighteousness) *in the Name of Christ*, and by the (searching) Spirit of our God, and so are now a [2] *pure Church* *not having spot or wrinkle or any such thing*, but walking [3] *Circumspectly* (exactly, precisely,) [4] *avoiding the very appearance of Evil*, and [5] *hating the garment that is but spotted with the flesh*.

Besides, we Know Love is the fulfilling of the Law; the summ of the Christians Law; The first, second, and third thing required, All is briefly comprehended in it, and can this Consist with wrong? Do I love my neighbour when I injure him, when I oppress him, and will not give him mine own, nor will not give him His own? Is this Justice? far below Love! Is not Mercy and Pity a strong piece of humane good Nature? Compassion to one that needs (much more to one that hath Right) the top pinnacle of Christianity? *I will have Mercy and not Sacrifice*, says [6] *Christ* [7] *from the Law*, and my Disciples shall be *kept alive* rather than the Sabbath sanctified: And do these things Consist with Wolvish Cruelty and wrong? to spoil a man and his inheritance? to Rob a man of his Right, or not to give him his Right? *Wherewith shall I come before the Lord*, saith the Prophet, and bow my self before the High God? *Shall I come before him with burnt-offerings and calves of a year old? Will the Lord be pleased with thousands of Rams? or ten thousands of Rivers of Oyl? My first-born for my transgression? the fruit of my body for the sin of my soul? No: He hath seduced thee, O man, what is Good, and what doth Jehovah require, but to do Justly, and to love MERCY, and to walk humbly with thy God? So in another Prophet, To what purpose is the multitude of sacrifices?*

(1) *Fallen Persons*
with *ills*, and
as *OLIVESS*
sinners which *he*
one shall see the
Lord. *Math. 23. 14.*
Blessed are the
Pure in heart, for
they shall have the
admission here.

Math. 23.
(2) *Ephes. 5. 27.*
(3) *ver. 15.*
(4) *1 Th. 5. 22.*
Ab omni specie
mali.

(5) *Isa. ver. 23.*

(6) *Math. 9. 13.*
chap. 12. 7.
(7) *Holca 6. 6.*

Micah 6. 6, 7, 8.

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Esai. 1. 11.

Crifices? I am full of the burnt-offerings of Rams, and the fat of fed beasts. Bring no more vain Oblations: Incense is an abomination before me: your new Moons and Sabbaths, (All these God himself commanded) the calling of Assemblies I cannot away with, &c. But what then? Wash you and make you clean: Put away your evil doings, Seek judgement, Relieve the oppressed, &c. and then come and let us reason together. And least any should think these are Old Testament Duties, S. James has left Pure Religion to consist in Such things, chap. 1. 27. What! has the meek Gospel brought in Cruelty and hard-heartedness? Does the Christian Law allow us to be unmercifull, unjust, unrighteous, fierce, savage, barbarous, and no Religion or Irreligion in the dispensation of wordly Goods or conversant about them, as in oppression, fraud, injury, putting men out of their own, &c. that a Man may be a Lion, a Christian, a Tyger, and a Vulture all together? preying upon what he can catch of his neighbours, and holding it, without any bowels of compassion? Is this to follow the Lamb (of God, that taketh away the sins of the World) whither soever he goeth? What saith S. Peter, Be pitifull, be courteous, rendring to none Evil though for Evil? What said S. Paul, Put on therefore as the Elect of God, (Holy and beloved Brethren) bowels of mercies, kindness, humbleness, meekness, &c. What saith both their Master, Be mercifull as your heavenly is mercifull? Is this agreeable hereto to oppress and undo without cause? To turn our Fellows out of those Rights they have as good Titles to as our selves to any thing? to contribute our small and single power to undoing of Thousands? yea, thousands of Families, of Choicest Wits, best Education, greatest Hopes, highest Trust, that have mens Souls committed to them but They, their Persons and Estates should be left to spoil, themselves bequeathed to the Beggars inheritance the Wallet and the Scrip, to live of what is Given them; and God knows, Charity is so cold in our Northern Clime, that many are heard to have been starved every Winter, and when Summer comes have little more then Chams allowance to his father, A Mantle to cover nakedness: And helpless too; for what should they do? They have their due Rights with-

Rev 14. 4.

Iohn 1. 29.

1 Pet. 3. 8, 9.

Col. 3. 12.

Matth. 5. 4.

Luke 6. 36.

(1) For the more quiet and virtuous increase and maintenance of divine service, for preaching and teaching of the Word of God, with godly and good example giving, &c. Be it enacted, ordained, &c. That no spiritual person secular or regular, of what degree soever he or they be, shall from henceforth take to farm to himself, or to any person or persons to his use or the Lease or Grant of the King our Sovereign Lord, nor of any other person or persons, by Letters Patent's, Indentures, Writings, by word or otherwise, by any manner of means, any Manours, Lands, Tenements, or other Hereditaments, for term of life, for term of years, or at will, upon pain to forfeit ten pounds for every moneth that he or any other to his use shall occupy any such Farm, by reason of any such Lease or Grant hereafter to be made. The one half to the King, &c.

And be it also enacted by the Authority aforesaid, that no Spiritual person or persons, Secular or Regular, of what estate or degree soever they be, shall from henceforth by himself, nor by any other for him, nor to his use bargain, and buy to sell again for any lucre, gain, or profit, in any Markets, Fairs, or other places, any manner of Cattel, Corn, Lead, Tinn, Wines, Leathers, Calfow, Fish, Wool, Allood, or any manner of Victuall or Merchandise, what kind soever they be of, upon pain to forfeit treble the value of every thing, by them or by any to their use, bargained or bought to sell again, contrary to this Act. And that every such Bargain and Contract hereafter to be made by them, or by any to their use, contrary to this Act shall be utterly void and of none effect. The one half to the King &c. as before.

Provided &c. that no Spiritual person or persons, Regular or Secular, of what estate, degree or condition soever he or they be, from the first of April next coming shall have, use, or keep by him or themselves, or by any person or persons to his or their use or commodity, any manner of Can-house or Can-houses to be used or occupied to his or their use, commodity or behoof: nor any Brew-house or Brew-houses, to other intent then for their own use, under pain of the like ten pounds a moneth. 21 Hen. 8 cap. 13.

holden, and cannot Dig, to beg they are ashamed. Shall they return to their fathers house? Most of themselves are Parents. Shall they take some commendable course of life? The Laws are here a hedge of Thorns in their way, or rather a Castle wall furnished with Artillery, and having store of Ordnance mounted and rammed up with penalties ready to be poured out, perhaps [1] ten pounds a moneth if they shall keep a Malt-house or Brew-house, or use a Farme, and buy or sell, or use honest Merchandise with their Neighbours. Sit still and want they may, and sterve, and this like to be their desperate refuge. For 'tis known how the Statutes have laid perpetual restraint, disabling or punishing if they make any excursions into other mens bounds, not dreaming they should be ejected out of their own, and so far, well: for it was prudently forecast, that every one should tug at his own Oar, and keep his Oar in his own Boat; that every sort should keep within their own limits, and 'tis justly penal if they be extravagant, and further confusion of things by mixing confusedly employments. But then a man should be allowed his own, and not beat out of his own doors, and forbid to enter his neighbours: This makes him desperate with reason, and if that be taken away was the reason of his Restraint, it is but equity he have leave to return to his Natural first liberty. How do

the Prophets exclaim against cruelty, oppression, wrong, the iron hand and stony heart? Some are ready [1] to sell the poor for a pair of shoes: [2] others remove the Land-marks and violently take away the flocks: they drive away the As of the fatherless, and take the Widows Ox for a pledge. Others [3] tear off the skin, and pull the flesh from off the bones, chopping them in pieces, as for the pot, and as flesh within the Cauldron: and do not the tears run down the widows cheeks? says Syracides. These are Complaints besitting Gods Book, of things Religion doth naturally abhor, and shall we further any such injustice as may, under what form soever, occasion them or the like, and yet have Charity in our Bible, Justice in our Law, Equity over all, and Mercy at the top of our Religion, above Sacrifice? Consider also one example or two, how such like injury has thriven and prospered, either with Sacrilege or without Sacrilege, of these that could not be content with their own, but must incroach upon their Neighbours, and have it, and they prospered accordingly with a Vengeance. *Ahab* had a fair inheritance, His Ancestours lived well upon it as Kings of *Israel*, and when *Naboth* had his own too, we hear of no complaint or disturbance, but when He that had Much must have More, He that had Little must lose of that, and the poor mans garment be taken away to piece the Rich mans skirt, perhaps to cloath his beast, or provide Hangings for his Lodging chamber, or Dining Room (as I never heard me thinks a sadder complaint then, that Walls are cloathed, while the poor go naked, Horses well futed and fed while Christians sterved,) Then went all to wreck, and this incorrigible unreasonableness of one must be a cause to both of their confusion. A pang of lustfull covetousness lays hold upon the rich mans greedy heart: His neighbours little Cottage and Garden himself falls desperately sick of, and never can be well till the usuall forms of Justice had been used for murther, fasting and prayer must let out the life-bloud of the poor man to let in the ungodly King into his Vineyard. and then all as should be. But shall he prosper? No: To give warning to all unreasonable Mammonists who cannot be content with that they have, though Nine have the

(1) Amos 2.6.
chap. 8.6.
(2) Job 24. 2,3.

(3) Micah 3. 2,3.

1 Kings 25.

the other one for Nine the Tenth too, Let him couer, and take, possession with a vengeance: *Hast thou killed and also gotten possession? Thus saith the Lord, In the place where the dogs licked the bloud of Naboth, shall dogs lick thy bloud, even Thine*, [1] and the Prophet *Elijah* was sent to tell it him, none of whose words would, or could, or did fall to the ground. *Gebazi* [2] could not be content with his Own, but must abuse his own Credit, and his Masters trust, the expectation from a Servant, and interest in a Master both together, for a Talent of Silver (perhaps some spending money to his former means,) and two changes of Garments, the superfluities of a Ward-Robe, and how ended the buliness? *The Leprosie of Naaman cleave unto thee and thy posterity* (an hereditary plague,) and he went from the punishers presence a *Leper white as snow*. *Achan* [3] could not let the golden wedge and the Babylonish garment go in the Due way God had appointed, but must be filching for his private use, what had been *publickly Devoted*, and the whole Army, yea the whole Nation, yea all Gods people sped the worse for it. In deed it was a *Cherem*, [4] Religion had laid her sacred hands upon all that Spoil for God, and thence the severity of worse, then ordinary indignation. [5] *It is a fearfull thing to fall into the hands of the living God*, for [6] *Our God is a Consuming fire*. *Ananias* and *Sapphira* their offence lay not altogether beyond the things of this life; they did but take back what of Earth they had devoted to Heaven, and yet how does the *Wrath of God fall upon them to the utmost*? We finde them gasping and dying at once and presently both; as terrible Examples of divine severity as we finde any where, and yet the meek Apostle inflicted it by his power from another World, and I hope we believe it because we pretend to believe the Bible. Generally observe, there and in *Uzzahs*, and *Uzziahs* Case, the poor wood-gatherer, the men of *Bethshemesh*, or wheresoever in the least Religion has been touched to be profaned, Gods *jealousie* has been up and his quick hand reached home to revenge with sharpness of fury any such violation. Nor may we forget the poor man in [7] *Nathans* Parable: Alas poor man! he had not much, but one poor Lamb for plenty

(1) Chap. 22. 38.

(2) 2 Kings 5.

(3) Josh. 7.

(4) Chap. 6.
17. 18. 19.
Chap. 7. 1.

(5) Hebr. 10. 31.

(6) Chap. 12. 29.

3) Sam. 12.

plenty abroad, and that the Rich miser must have to spare his own fold, But shall it goe so? No, saith *David* in another Mans case, He shall feel my Angry Hand: By a great oath, his own life shall expiate an offence with these circumstances, and the lamb he shall restore fourfold beside, because He did this and had no pity! O pity, pity! is still a great part of the Bible goodness: Oppression and wrong, Nothing More, the merits of Hell fire by our Religion: the Law and the Prophets, the Old and the New-Testament joyn in to have justice to all, and *Mercy* to those in need a necessary qualification, No hopes of religion without them, because their want is a transgression of Religion, and what then of those who cannot be content with their Own, who will not give other men Theirs, who having Nine for One already grudge and complain that they may have that One for Nine also *from Gods service*, to sacrifice to their own greediness, covetousness, insatiable bellies, or lusts and voluptuousness. The laws of the twelve tables or Mahomets Alcoran, the Bannians (1) Shaster, or the (2) Persees Zundavastaw may teach them or us as much Religion as this: Nay the tables of the bosome afford it clear and fairly legible, that Every one must have his Own, or else there is no living, and this is the very outside, (I know mine own bosome) of that I did intend to contend for: Nor Therefore Throughout the world Doe or can I fear any just man mine enemy.

But I will not now divert: Hitherto we have kept promise, and made our walk through the Groves of Paradise Onely: Gods blessed Book, from the Sacred leaves of whose Holy and heavenly Oracles have these amplifications been drawn, which it would be our wisdom to heed, as it is in our Faith to believe, and must be our Righteousness to Obey; and this directing in what we should doe, or what we should not doe, about Civill Justice, by rule or example. Methinks somewhat should stick, I hope it will, I pray it may, and None be the favour of death unto death, but, (as it will work some way) of life unto life, and that of the Soul, and Everlasting. All (3) *Scripture is given of God: S. Paul* tells us this (4) *Whatsoever was there wis-*

(1) The title of the law of 1200 Easterlings whose eighth Morall commandment is, Thou shalt not steal: Herberts Travels, page 43.
(2) Some other Easterlings who call their law by this name. One of their Morall precepts is, Not to covet what belongs to another man: Id. page 51.

(3) 1 Tim. 3. 16.

(4) Rom. 15. 4.

- ten aforetime was written for our instruction, that we through patience and comfort thereof might have hope and Light: Now among the heavenly contents of those Divine inspirations are these Rules given, these examples recorded, (1) That we might not lust as those (then set up for an Example) lusted; Nor Covet as they Coveted, nor Murmure as they murmured, Nor yet be destroyed, as they were neither of the destroyer: For these things happened to them for such Examples, but are written for our admonition upon whom the ends of the world are come. Thou hast, Christian, thine own light shining in them, which thou beleevest came down from heaven, of the same kinde with that outshined the brightness of the sunne, with (2) *Saul, Saul, Take heed, Take heed*; Venture not too far, *Why persecutest thou me*? Believeest thou? wilt thou not obey? If thou wilt not, *He that (3) is holy, let him be holy still: and He that is righteous, let him be righteous still: and He that is unjust, let him be unjust still; and He that is filthy let him be filthy still: He that will Covet, let him Covet still; He that will have his neighbours Goods, let him at least graspe after it still: But withall know, (4) That God will bring thee to Judgment: (5) He that does wrong shall receive for the wrong he hath done, and with Him will be no respect of persons.*
- (1) *Cor. 10. 6 &c.*
- (2) *Acts 9. 3, 4.*
- (3) *Rev. 22. 11.*
- (4) *Eccles. 11. 18.*
- (5) *Col. 3. 25.*
- (6) *Psalms 15. 1.* *Iniqui regnum Dei non possidebunt: (6) Lord, who shall dwell in thy tabernacle, or inhabite in thy holy Hill? Not he that leadeth a Corrupt life, or doth the thing is not right to his*
- (7) *1 Thess. 4. 7.* *Neighbour; (God (7) is the avenger of all such things, as is every where testified:) but sweareth, or giveth to him, and disappointeth him not, though it be to his own hinderance.*
- (8) *2 Pet. 2. 15, 16.* *Remember Him that (8) loved the wages of iniquity, and Judas (9) who sold his innocency for thirty pieces of silver; and (10) Belshazzar who must have the Temple-bells to carouse healths in to his Kings & Concubines; He would hardly have forborn at the perswasion of a prophet, though he were Rich before, But the worth of a few talents must be taken from Gods then Church, which ended fearfully; His Countenance changed, His thoughts troubled, His back crippled, and His knees smote one against another. And yet this but*
- (9) *Mar. 26. 15.*
- (10) *Daniel 5.*
- (11) *Psalms 9. 17.* *the beginning of Sorrows: For All the (11) wicked shall once*
- be*

be turned certainly into Hell, and All the people that forget God. Sed meliora canamus, I hope better things, and things that accompany salvation, though I thus speak: That every Christian will be himself, That every beleever will be ruled by his own Rule; that every son of God will be guided by his father, and give to every one his Due, whether God or man, as is written down in the draught of his will, the tables of the Old and New Testament. It hath been hitherto but mistake hath made men grumble, That some tyrannous imposition hath enforced Tythes, some Statute Rampant in behalf of the Clergy, perhaps foisted in by themselves in the last age; but now the truth is cleared up, the heavens shine, 'tis bright as day that the whole body of the Just law, has, and has from all times called for them, and made them due, a necessary part as any of Civill righteousness; Now Men I hope will then not deliberate nor dally, but walk in the light, while the light shineth; Doing as they would be done by, Giving every one his Own, yea Paying, not Giving, for that is required of thee, if thou be Just, not Bountifull. *I my self* 1 Tim. i. 13.
also, says S. Paul, Was sometimes a Blasphemer, a persecutor, and injurious, But I obtained mercy because (and as long as) *I did it ignorantly and in unbelief,* (No longer.) If I should have done it afterwards, after the truth came clear to my soul, or it shined from heaven, and I would or could have closed fast mine eyes against it, I might have overstaid my time, and the light have been taken from me, but I beleaved and converted, and then the Lord (that would have on all) had mercy on me, because I did it, as I did, hitherto in ignorance and unbelief.

Now my last appeal should be *ad Populum Christianum*, from Severall Persons, to whom hitherto, to the Body of the People of this Nation; High and low, Rich and poor, One with another, as the Psalm speaketh, and All Together, for the thing concerneth All: And my desire tends to this, That they would in the name and fear of God take heed what they doe, and not be too forward to set their hands to that they may beshrew their fingers for all days of their lives after, in shaking I mean or removing one Stone more out of the building to

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leave the rest loose; or by unsettling *Levi's* Parsonage house, give such example or beginning to shake all the rest, that No one shall for an age live secure, That His will not next year fall down about his ears. Remember what before of, Imbarqued All in one Vessell, standing All on One bough. (Take heed of cutting that) and Beware of touching that string to any violence that holds All we have together. Gentlemen and Noblemen look to your selves, ye have (as now things are) fair inheritances; God bless them to you, and you to them; ye live in *Canaan*, Long may ye there live to serve God in Christ in all *worldly felicity*: But take heed of venturing too farr in untrodden pathes that have at least shew of danger; (the earth seems to shake under you already;) Be not over-forward to the unsettling *Levi's* Portion in this good land the Lord your God hath given him with you, which stands here upon the same foundation of Law. (whether of God or Man) that yours and others doe, For fear if you should, what has but the same support may rotter if not fall (with His) down together: Be sure there is Justice in heaven, and but too likely means on earth to bring it to pass, that if your hands should help to convey fire to one Corner of the thatch, It may very soon it spread and run all over the house, beyond the reach of strength or power of policy and honest art to suppress the flame, before it hath burned both you and yours, your stately and magnificent sumptuous Edifices. Your mansions are many, the Buildings great and fair, their Turrets high, the Battlements stately and lifted up, dispersed far and wide over your rich and ample possessions: Long may you enjoy them to comfort; But if you should rejoyce in iniquity, and not in the truth, furthering or permitting that spoil is of the nature would ruine your selves and *Your own*; Take heed the stroke reach not home to you too soon, leaving you justly ere long neither house nor land, nor field, nor inheritance. And Good Christian people All whatsoever, Be not *Ye* wilfull to your own injury; Doe not stubbornly persist in a way may goe on to your inconceivable danger. If your Tythingmans due be as your Own right, if his Glebe be as your Freehold, and his Tenth from your land as your Nine in it,
and

and the Land it self; take heed how you meddle with the common support, the foundation and onely stay and cement of both together: If his bee stirred, and yours thereby loose; if you take away his, and he put on for yours, (as why may he not?) if you both thereby fall a scrambling, thence a quarrelling, and so a fighting what can follow hereon but very confusion? A third may as well strive for both, and then what have you gained? If the fence of *strong Law* be not able to keep Him harmless now, How should you expect that the same armour should defend you, and that spoil and violence should not break in to your disturbance, perhaps to lay All in Common, to which the breaking of some inclosures, does more then declare, act and operate to make way for. *Let every one have his Own*, and that is an easie and obvious piece of Justice: I say again, *Let every One have his Own*, and thats All I contend for, which should give offence, or shew of offence to None but those that would have that which is Other mens. That is His Own the Law makes so, of which *Levi* having as Much as any other Tribe, He must have thereby as much of Property, and thereby Right and Safety, and Security (He should:) and the troubling or disturbing him cannot in equity, and the nature of the Thing, but doe that which if it should be prosecuted by the same Principles must needs bring about, and redound consequentially to the disturbance of all Israel. Justice is all I plead for, Common-Justice, a low and fordid Heathenish vertue not so much in Christianity, as I take under it, and thereby in it, as it comprehends under it universally all sorts of goodness: *Suum cuique*; therefore, good Englishman and Brother, and this is both Common Law and common Honesty.

As to the Publique I have said nothing thereto; Observe it all along, and that I have so tempered my stile, according to my meaning, that I neither have, nor can my pen be justly interpreted to have said any thing thereof one way or other. And observe it well: for private malice is often apt to shroud it self under the Statesmans Gown, making a stalking horse of the Publique to come at self ends, with craft of *from the power above*, fighting with greater advantage against weak-

ness below, and then gold and armies may soon overwhelm (by such misuse) any private innocence. I crave therefore yet once more this notice heeded, that of the publique I neither have, nor meant, nor I hope have given occasion it should be thought I have said any thing. The Magistrate is that *ἐξουσία ὑπερῶν* or awfull power at top; it may be justly dangerous for any private man to intrude to meddle with, or whether by censure, direction, caution, counsel, or almost good advice to draw into his presence, unless there be to *Esther* her self held out the golden scepter of clear and evident in this case necessary, either permission or invitation. With him therefore I have thus soon done, almost as soon as begun, and craving pardon for but thus looking toward him, crave leave also humbly to take my leave and depart, the most that I have said to or of him, being but this, that I would or meant to have said nothing to or of him at all. A single self is the only fittest object, whether of admonition, instruction, information, or (if need be) contestation for him who is deservedly toward the very lowest stair of those that are such; and who yet trusting in the Righteousness of his cause, and therewith (that which uses not to be wanting) the assistance of his God, (the honour of Christ being also and the Being and continuance of the Gospel of Christ somewhat interested in the Event) fears not the best and greatest of those that are, in that singularity, upon the highest. Religion, Reason, Truth, Justice, and the *LAW* are his great Patrons; which as He defends, and would not have stirred a bodkin for any other; so he mutually hopes They will defend Him; and by them, they are so publique, returns that advantage which ere while was declined to have against him, of publique interesse and strength enough on his side: For they never come in alone, but assisting with the most voices and votes, arms and armies of men in the world, and if I have not them on my side, I disclaim mine own ingagement, and all my undertaking and performance, presently. For I shall always account it honest policy, whatever in other matters, to strive Here to be always on This strongest side

Rom 13.

Esther 4. 17.

side, so farre that I professe to remove and shift my saile as their appearance or advantage from them may occasion, that I may steer my course along with them constantly, nor will I be of that party, (but rather forsake all, as near as I can my self) that shall in the least degree give them or what they would have, opposition. If any can shew I now am, I am not only ready to withdraw, but shal at any time hereafter shew my willingness to kiss that hand shal gently endeavor to lead me from Errour to Truth, from Wrong to Right, Nay even love that Sober violence that will not suffer me to plod on securely and without controll in an ill way, Though I should be at first a little drowsie or inapprehensive; But for the bitterness of malice and rage of fury, which uses to doubly torment, yet doe no good, wounding an adversaries perhaps reputation, perhaps patience, perhaps both, and through the sides of Truth too, and yet works no correction, nor establisheth any thing in the room of what it destroys, I leave to that Justice is wont to bring about *in foveam quam foderunt*, and that the fire shall work onely upon that coale that bred it, but gently warming whom it would, but could not burn. So does malice, and *So let it*; onely eat into its Own bowels, and fury torment the iraged in their own flames; for me, if any sparks thereof should fly about, and touching me somewhat sharply, prevail to a temptation of return of the like, the worst arrows of Revenge I have presently ready to retort are, Permission, Pity, Prayers, and Patience, being resolved to entertain the cross with nothing of more malignity then what I learned from my Saviour on the Cross, They may not understand themselves, *Father forgive them*.

Which as I have received from and by Gods grace in this my life; so I hope and pray, (and the rather hope, because I know I unfainedly pray for it) that it may accompany me to my death, and be mine to the end and in the end; and this shall set me for ever beyond the smart of Injuries. Good Christian, be Thy self, Not a *Name onely as if thou Livedst*, but a Christian in Deed, in Love, in Meekness, in Charity, in Justice, in Mercy, and forgiving as thou wouldst be forgiven. Love that Justice, Hate All iniquity, give Every man his Due, Prefer

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Prefer not the world before thy Soul, Honesty, or Religion ;
 Let every one have His Own , but Love God Above All, and
 pray that I may be as Thou art, and then no doubt God
 which is our Own God shall give us Both His blessing ; His
 blessing of peace and quiet Innocence Here, with eternall
 rest in the world to come with himself ; To whom, One and
 Three, be all honour and glory

For Ever

&

For Ever

For Ever.

Amen,

Amen,

&

A M E N.

Τῷ Θεῷ, καὶ Θεῷ.



A Prayer of the AUTHOR.



L O R D Jesu Christ, which sittest at the right hand of thy Father in fullness of Glory, Sith by thy Providence I have had Opportunity, by thy Grace been Directed, by thy Power Inabled to lay together these things, conducing, I trust, to Thy Honor and Glory; I give thee humble and most hearty thanks for the Riches of thy Mercy

vouchsafed herein, and Pray, both that Thy Blessing may go along with this Work of thine own Service, and that the Things may be successfull Thereby for that Great end for which I have intended them. Give them Prosperity and good Success abroad in the World, and Give thy Servant always Grace to rest even abundantly and richly contented, satisfied, and rewarded in having attempted any thing to the Honour of Thy Name: Let thy Gospel flourish by All means, Prosper All Courses that tend That way, and if the continuance of these stated Dues be One (so looked upon by the eye of thy Providence, and requisite in the nature of things,) I cast my self down before the foot-stool of thy Throne, Praying and Beseeching, That it may not be in the Power of Manto withdraw or pervert, disturb or destroy. Though thine adversaries should be many and rage horribly, yet Thou that dwellest on high art still Mightier; Arise, O God, and let not Man have the upper hand; let thine enemies be judged in Thy sight, and Put them in fear that they may know themselves to be but Men.—Defend also thy servant, who putteth his trust in Thee: And if he desire before All things Thine Honour, The stability of thy Gospel has been his chief and onely aim, nor has Any line here but been meant to tend, (as directly as guided by humane frailty it could,) to that point to end in that Center, O give thou Not Him then over into the Will of his adversaries, that if any Hate they may obtain Lordship over

A Prayer.

ver Him : Make good Thine Own Cause, in standing by Him that laboureth for that Cause, Thy Truth and Thee; Stretch forth the right hand of thy Power evermore mightily to succour and defend Him, Deliver him from the gathering together of the froward and from the insurrection of Evil Doers; Let the ungodly or unjust fall into their own Nets together, but let him ever escape them. Give also, Good Lord, Merciful and Gracious, unto All that love thy Truth eyes to see it, Hearts to embrace it, Affections to cherish it, and a good will to Do accordingly: and vouchsafe likewise Prudence against the subtil Serpent that Any who bear good will to Sion, may never procure her Hurt, but stablish these due Means on Earth thy Providence looks upon and has appointed as necessary to accomplish their just and holy ends, what they meant to establish, by no improvidence ever disturbing or destroying. Finally, Grant Victory to Truth, Progress to Justice, Stability to thy Church, Perpetuity to Thy Gospel, and that no Lovers thereof Here may take up lower then with, That the Light thereof may continue shining Ever and Over All the world, to All ages and generations. Thus let thy Name be Hallowed, O our Father which art in Heaven, Let thy Kingdome come O Saviour and Blessed Redeemer, Let thy Will be done Most holy and blessed Spirit, in Earth as it is in Heaven: Give us, Forgive us, and preserve us from Evill: For Thou only, O Christ, with the Holy Ghost, art most high in the glory of God the Father; To which God One and Three be All Honour and Praise for ever and ever. Amen.

Grace be With all those that Love the Lord Iesus Christ in Sincerity.

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Courteous Reader,



OR so I style thee, and hope to finde thee, or have need to Make thee, and the most bountiful dilatation of thy Courtesie drawn forth to Cover or Pardon those many imperfections this my first-born hath brought with it into the world. Some doubtless both in matter and form; for Who ever Spake that Erred not, Much in More then a little? (*In multiloquio nunquam deerit Vanitas*, This at the least, as the Wise man assured,) from Shortness of Inquiry, Dimness of Understanding, Weakness of Judgement, Distraction of Business, Inadvertency or some fruitful Cause of Errour or other, Most men being forced to number their mistakes by their Pages; Onely as to purposely Erroneous, *Deceiving or being Deceived*, I Sacredly and Seriously disavow. At the Press also Poor *Mephibosheth* caught some mischance: Blemished in his face? nay, crippled in his limbs, lamed at least in his feet, and complaining oft he can hardly go right forth for want of sense; which bruises require thy Healing Correcting hand; Some of Many are collected, and annexed, The rest, like our daily slips, almost innumerable.

Thou art to be, 1. Remembred, that *In multis labimur omnes*, None (below) goes so sure but he slips sometimes, None so firm and upright but he steps a little awry, and Thy self wilt, I trust, ask pardon for thy daily failings. 2. Intreated, to *Do as thou wouldst be Done to*; Judge (or Judge not) as *thou wouldst* (or wouldst not) be judged; in the spirit of meekness, *Considering Thy self, lest Thou also be tempted*. 3. Informed, That a purpose was of attempting satisfaction

March 7. 12.
1b. ver. 1.
Gal. 6. 1.

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of those many whether frivolous or more weighty and substantial doubts that usually occur about this established Course (the frame whereof was likewise contrived, and divers of the materials brought together,) As that, This proportion is too much, The Receivers are Ill Men, Good Men take offence at Both, Exactions throng in with Suits, and Injuries with Exactions, The bottome of all is in *Canaan*, some Jewish Laws, The people shrink under the Heaviness of the Burden, *Iure Divino* is declined by Many, (and Here,) The Supreme Power may alter all Humane Constitutions, &c. But, because These would both lead toward the *footstool of the Throne*, (whether, save in my Devotions, I constantly decline to look,) That which Is is Much, These might make Too Much, And here are Principles (especially from the Main of Civill Right made unquestionable, and the Morall and Indispensable duty of Justice in paying which must needs follow thereon,) upon which common reason may work out satisfaction to the Most, I therefore Suppress or Delay, as Accepts of what is here may further encourage or dissuade. Be requested, 4. and lastly, not to take Causeless exceptions at any of those things which as they come from us and in our Humane frailty cannot but afford those that are Material, Reall, Weighty, and Substantiall enough. I speak of most things As They Were, and as in the Times When They Were (How else should I reach home?) as Churches, Clergy, Royalties, Rights, Jurisdictions, Princes, Peers, Powers, Priviledges, and Preeminencies, &c. Not that I am willing to engage for All another may think good to oppose about them, Or stand in Defensive of Any thing howsoever since altered: But (as *St.* as the Apostle suggested with much quickness in another case,) *One Thing I do*, That I am about I Here keep to, and so that be Secured, would not willingly intromix, draw or be drawn in to other accidentall by-Quarrels; So I may have leave to convey my Parlee to the World in the language of the World, best understood by the World, I would not willingly inwrap my self in controversie about any other of Those Things they yet stiffly enough maintained, and in a rigid import who took up the words and
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gave them Us in their first and full sense; Nor hast thou reason to be offended that I balk not *the publick tone*, to conform to *thy Singularity*, for the Many are to be regarded in A Multitude, and the Most in most largely diffusive Communication to All; But if thou remain obstinate and undeniable in thy expectation or otherwise satisfaction, I conform to Thy desire: Change what thou wilt, so thou keep the matter; Retain the substance and vary the phrase; Hold to the Body, New-shape my outward form of Expression, conform to thine own will, judgement, or fancy; At thine own charge I approve, or (if thou wilt) Suppose the thing Already done.

Thou sha't but wrong thine own Judgement to thy judging friends, if thou quarrel with shadows, or take advantage of that I confess to take licence and scope enough in, a free and plentiful use of Tropes and Figures. Allusions or Similitudes, thou knowest, are no good ground of *Argument*, nor should, thou knowest as well, of *Arguing or Accusation*: These sporting excursions of busie and active fancy have been allowed to accompany and recreate the work of gravest pens, Of no worse use in consequence then flowers to straw and adorn the work finished; True Charity, if thou hast any, will never make the worst of any thing is doubtful or may reasonably be interpreted with Candour to a better sense, Nor can thy Christian Charity, if it be true, but be large enough to cover a heap of *worser finnes*. I confess already to say many things I would not stand to in the strictest sense, (Examine Scripture, if thou wouldst be such a Judge,) much less in Any thy Wit or leisure can affixe, least in what is Heterodox to the Established and so like to be Troublesome, or indeed Any but what I use or mean, (And yet hope All may pass with Candid and Ingenuous Mindes:) Think not if I mention a Temple or Oracle, An Altar, Priest, or Sacrifice, Crofs, or Supposed Saint that I am presently at my Adoration, or love All I mention without any signified dislike: Of most things I speak as they Have been taken, My eye upon the main, diverts and takes me off from purposed meddling or giving all I think of the intermediates, and so I come right to my ways end,

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what matter if I have been a little out in what tended thither? So I come safe and sure Home, I will not shun to own mistakes (involuntary) by the way. I conform my self, (at least I think I do) to the present state and condition of Things, being no *Prophet* or *the son of a Prophet* to judge of Future, or foretell in the least measure any thing of that which is to come : And therefore unreasonably shall any expect I come up to that *Which Shall be I know not What, or When, or Whether it ever shall be*, Antedating obedience to the Law, (which is a path narrow enough as it is, and hard to keep in the manifold observances it requires ;) But if *any thing shall be changed*, I have no doubt ready enough the *Lawful* obedience of a *Christian*, as keeping my self close to that I often glance at, sometimes express, never but mean, that *Religion tendeth much to peace, Civil peace*, and in this world, nor can that is truly *Christian*, (being also truly taught and understood) ever tempt or permit to *seditions disturbance in Any Civil State*. Howsoever, Till Change be Made, What is Present is the rule, and should be the defence of any that adhere or stick close to their known allowed guide, Importing nothing but *innocence and justification till it be altered*; Further conformity will come early enough when the Law is fixed, Till then there is no *ἀνομία* and should be no *ἀντίτῃα*, for *Where is no Law there can be no Transgression*.

Rom. 4. 13.

Matth. 10. 10.
Luk. 10. 7.
Gal. 6. 6.

There may be whom other courses like better : Learned and pious who stand to the Good Will of their people, (not like to be any great losers neither if their own Canons take place, *The Labourer is Sure worthy of His reward*, *The Catechumene With his Catechist*, the Taught with his Teacher, ἐν παντι *Communicating in all his Goods*, they being further but reasonably allowed to interpret their chosen rule, as, Who but the Priest should give the minde of His Oracle?) And these may think it Mercenary to make any bargain (as 'twere before-hand) for *Certain Wages* for this outward Humane work in bringing in the Lords Harvest, accounting it *Covetousness, Improvidence, Distrust of God*, or *Undervaluing the Work* to condition or expect any thing stated before-hand, (as of the Tenth,) *They will rely on what is after*

after Given. May they do so, and also have so; yet so as they reasonably allow Others to keep *Their Own several Way*; else they tyrannically impose who would leave most at liberty; *Pecimusque damusque*. or if not both Mutually No reason either should inforce or be at Liberty. *Peters* faith we know was strong enough *to walk to Jesus upon the Waters*; and when he but saw *Him* on the other side, he forsook all presently, and *girding his fishers Coat unto him cast himself into the Sea*, and so came safe to him in a way most others feared, or might have been drowned by; And Yet *John* and the other *Disciples* staid for a little ship, Their zeal awaited a Convoy, and by such Helps alone as others used They would come to their Master a land; Whither also *Thus* with safety they Did come, and were with equal welcome admitted to be where *Peter* was: Perpetually Assuring that though the boldness of the faith of some dare venture on miraculous wonderfull ways (wherein others may have miscarried, or are like to do) venturing to tread on the Waves which many tremble at, making *Their passage in the Sea*, and their foot-path even on the waters as the Psalm speaketh, *Yet their fellows* may with approbation of acceptance, and assurance of that approbation enough, expect and require the conduct and help of due and accustomed usual ordinary means to come unto *Christ*; and (though they fear to venture on the waves, trust the slipperiness of meer voluntary stayes which have deceived and sunk many low enough,) These as Those with safety, speed, success, and sure, and soon enough come Also to their Saviour. He that will not be Certain has no reason to blame Him that Would, any more then He that is strong ought but to bear the infirmities of the weak, for the common edifying or support of both, Not pleasing himself alone. If That may do Well, This Better, and is Likelier, if not yet Surer, and Full as Lawfull.

John 21.7, 8.

Rom. 14.1.

And yet for These neither have I done more then I undertook, or attempted any thing for their *jure divino*, which as it was without my bounds, so would I not incur the blame of Transgression by meddling with either way. Sometimes I must have touched upon it, for it was upon the very borders, scitu-

In the end of
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ate in the Confines of mine own walk, yet have I done it with that Wariness as not to intromix. Which it might be also needfull to note with so often repeated Declaration, least any should interpret doubtful insinuations to a perverse sense, or that I do, what I often say I do not, disclaim or oppose it. By no means, & under this very solemn protestation, submonition, and concluding Asseveration; The most likely that way being in a fair and rational construction otherwise I think interpretable; and what has most Colour retaining yet à *Salvo*, being warily read, to redeem it to constancy and from holding contradiction to firm purpose and All the rest. Nay so far were things minded and condescended to *This way*, and in *favour*, that upon His motion, who perused, approved, liked well, and after many other encouragements Honoured All with acceptance of a Dedication, Somewhat of Divine Right Should have been added and annexed (by another Pen) and in me it lay not that it was hindered, and came not forth. None of that which is, 'tis hoped, can be offensive to any to whom Justice, Truth, and Law create not a scandall; While our Records and Those Laws are preserved; to what other end could I think them kept and declared for, but that they might, when occasion is, be produced and alledged? Nor can I pre-judge any, bearing the Name of a Christian, of so vicious a tenderness, as that the evidence they give to Truth and Righteousness any where, or here, can offer him any the least occasion of displeasure or dislike.

Plal. 135 2.

For those are interessed (deeply) for the profit, especially the Reverend and Learned, my Fathers and Brethren of most Sacred and *Divine* Profession, of Them I have onely to crave, (I must and ought) *Exceeding Pardon*, (*Vos qui statis in domo Johovæ, in atriis domus Dei nostri*) that I have so weakly, lamely, and in many regards insufficiently performed, by bold attempt of single solitary industry, what might have well required the best of Their Conjoyned furtherance, *Humbly acknowledging* that a Work of this Difficulty in it self, and high Concernment unto Truth and Them, might fittingly have awaited the Conjunction of many heads, and been more happy by falling into the hands of many co-operating Advancers,
who

who might have both made out performance somewhat answerable to desert, and added also the Countenance of Authority, which the privacy of my Condition or unequal abilities Could neither expect or promise my self or Others: *But then Wish- all when I considered and They shall please to reflect on,* The darkness and untroddenness of the way, wherein I have been forced to go, mostly Alone, and (looking downward) *in Their onely Service,* The number and distance of the flowers from which this honey, as little of it as it is, must needs have been gathered, *(Without any help,)* The Labour of the Work, The difficulty of the whole, And so little encouragement for any part, that (in such stormy Times, when mens greedy affections are also checked, their lusts crossed, & their tender corruptions touched to danger of offence) Impunity is towards the highest of Hopes, *They Will Then,* 'tis hoped, if not for any desert abroad, at least from the Innate Candour and Ingenuity of which the World acknowledges such store within their own bosomes, *Vouchsafe this humbly craved and much desired and needed Pardon,* or perhaps yet a little farther and more favourably accept this pledge of Love and Evidence of Good will, none can but see was meant (in way to the glory of God and establishing his Book) to end (as to here below) *Cheifly* (for his Own is inconsiderable) *in Their Profit, Advantage, and Benefit:* It is left to their better skill, and united endeavours if they may be had, to smoothe up by degrees unto the highest Requisite of all necessary perfection what I have, I hope, not altogether unluckily begun (for this is but the drawing of my Ruder Coal,) and to add the Exactness of Art, Proportion of Lineaments, Symmetry of parts, Life of Colours, and all other Imbellishments of Ornament, Circumstance, or Substance, (very needfull in so very needfull a Work) to the degree of How, What, and As they Please,

In the great variety that is in the World, and some Opposition of Judgements, it remaineth hard if not impossible to please All, While One desireth This, Another That, One is for Antiquity, Another for Novelty, Such Laws please Some, The Contrary Others, and Some like None at all, Stubbornness making it out to a Prodigality of life often in Defence of bare

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bare Opinion : In which Case what should now the Speaker Do or say ? What, but even sit down in the Conscience of his Integrity ? Acquiesce in that he meant to offer His Sacrifice of Service to None but God and Truth; and if a few Sober and Grave either Approve or Pardon, to Account This (or but even the Last) a full accomplishment of Desire ; Taking assurance it is very unlikely to meet with any thing but Contradiction from *Those Many*, who Agree chiefly to Contradict and cross each other : When All Men are of a Minde, then may it be hoped One Thing will please All ; But This not like, till the same Gale of Winde fits severall mens Voyages, who have their distinct and opposite ways to All points of the Compass.

Now sit down and Consider, Judge, Differ, and Be Charitable, O Christian ! Remember much That thy Great Name of a CHRISTIAN, implying nothing More then *To Be*, to be nothing more then *Good and Verruous*, to be Good and Vertuous scarce in Any thing So Much as those necessary accomplishments of a Christian, in *Meekness, Mercy, Tender-heartedness, Grace, Peace, and Love* ; endeavouring to keep the Unity of the Spirit in that Bond of Peace, as the Apostle counsels, *μετὰ πάντων ταπεινότης, καὶ ἀγάπη, μετὰ μακροθυμίας*, &c. with all Humbleness, Lowliness, Gentleness, and Long-suffering, Bearing and Forbearing ; As knowing that *Rage is Brutish, Cruelty Inhumane, Fierceness Heathenish*, and Thou art thy Thy Self Nothing more then in Reason to Give and Forgive, Him that offends, even Purposely, till Seven times, and Seventy times Seven. So Put on therefore (as the Elect of God, Holy and beloved of Him) *Effects of Mercies, Kindness, Humbleness of Minde, Meekness, Long-suffering, Forbearing, and Forgiving* ; even as our Lord Christ his sake forgave both Us ; And then the Peace of God, which passeth all Thought shall no doubt dwell in thy Heart, as Christ our Lord. Amen.

F I N I S.

Imprimatur, Febr. 4. 1649.

JOHN DOVVNAM.

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